# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1917.

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## No. 704.

**W. C. HAMMER, UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA, APPELLANT,**

**vs.**

**ROLAND H. DAGENHART, AND REUBEN DAGENHART AND JOHN DAGENHART, MINORS, BY ROLAND H. DAGENHART, THEIR NEXT FRIEND.**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.**

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1 UNITED STATES OF AMERICA, Sct.

Be it remembered that heretofore, to wit, on the 9th day of August, 1917, a bill of complaint was filed in the office of the clerk of the District Court of the United States for the Western District of North Carolina, at Greensboro, North Carolina, in the case wherein Roland H. Dagenhart, and Reuben Dagenhart and John Dagenhart by Roland H. Dagenhart, their prochien ami, are plaintiffs, and Fidelity Manufacturing Company and William C. Hammer, United States attorney for the Western District of North Carolina, are defendants.

Said bill of complaint, filed August 9, 1917, is in words and figures as follows, to wit:

2 In the District Court of the United States for the Western District of North Carolina.

| | |
|---|---|
| ROLAND H. DAGENHART AND REUBEN Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs, vs. FIDELITY MANUFACTURING COMPANY and William C. Hammer, United States attorney for the Western District of North Carolina, defendants. | In Equity. At Greensboro, N. C. No. ____ |

*Bill of Complaint.*

*To the honorable, the judge of the District Court of the United States for the Western District of North Carolina:*

Plaintiffs, citizens and residents of the United States and of the Western District of the State of North Carolina, bring this, their bill of complaint, against the Fidelity Manufacturing Company, a corporation of the State of North Carolina, with its principal office at Charlotte, in the Western District of North Carolina, and William C. Hammer, a citizen and resident of the United States and of the Western District of North Carolina, duly appointed, qualified and acting United States attorney for the Western District of North Carolina, and thereupon complain and respectfully represent and allege as follows:

I.

Plaintiffs are citizens and residents of the United States and of the Western District of North Carolina; plaintiffs Reuben Dagenhart and John Dagenhart are minors, the sons of and residing with their father, Roland H. Dagenhart; said Roland H. Dagenhart is their prochien ami, duly appointed and authorized by order of
3 this court to bring this suit on their behalf; defendant Fidelity Manufacturing Company is a corporation of the State of North Carolina, with its principal office at Charlotte in the Western

District of said State; defendant William C. Hammer is a citizen and resident of the United States and the Western District of North Carolina, and is the duly appointed, qualified and acting United States attorney for said Western District of North Carolina.

II.

Defendant Fidelity Manufacturing Company is engaged in the operation of a cotton mill at Charlotte, in Mecklenburg County, North Carolina, for the manufacture of cotton yarns and cloths; employed in said factory are the said Reuben Dagenhart and John Dagenhart, plaintiffs, minor sons of Roland H. Dagenhart; plaintiffs are advised and believe that the Legislature of North Carolina has made provision regulating the employment of minors in mills and factories, including cotton mills, and that the employment of each of said minor plaintiffs and his work have been and are in strict compliance with these legislative enactments, and therefore in accordance with the law that obtains in the State of North Carolina; said minor Reuben Dagenhart is over the age of fourteen years but under the age of sixteen years, and said minor John Dagenhart is under the age fourteen years; each of said minor plaintiffs has been and is now in good health, and entirely capable of performing the services required of him; the work of each of said minors has been and is altogether in the production of manufactured goods, and has nothing whatsoever to do with the sale or other disposition or the transportation of the products of the factory, whether interstate or intrastate commerce; Roland H. Dagenhart is also an employee in said factory of the Fidelity Manufacturing Company; plaintiff Roland H. Dagenhart is advised and believes that he is, under
4 the law of North Carolina, entitled to the services of each of said minors until such minor shall have reached the age of twenty-one years, with the right to direct such services and to receive and enjoy any compensation arising from the rendition of said services; plaintiff Roland H. Dagenhart is a man of small means, with a large family, and the receipt and use of the compensation arising from the service of each of said minors is essential to the comfortable support and maintenance of said family, including said minors; the compensation to the plaintiff Roland H. Dagenhart for the service of the said minor Reuben Dagenhart has been and is on the basis of piecework, that is, a stipulated amount for each unit of labor performed, while the compensation for the service of the said minor John Dagenhart is on the basis of daily labor; compensation for the services of each of said minor sons so arrived at has been and is paid to plaintiff Roland H. Dagenhart periodically.

III.

Each of said minor plaintiffs has rendered efficient and satisfactory service to the defendant Fidelity Manufacturing Company, and the said defendant has made no complaint of the service rendered by

either of said minor plaintiffs or of the compensation paid plaintiff Roland H. Dagenhart for said services; each of said minor plaintiffs, particularly the plaintiff Reuben Dagenhart, has acquired skill and competency in said work, and it has been the purpose of the said Roland H. Dagenhart and of each of said minor plaintiffs that they should continue in cotton mill work as their life vocation, plaintiff Roland H. Dagenhart receiving compensation for said services until they respectively attain their majority, said minors fitting themselves, respectively, during these years, to follow an honorable and suitable vocation for life.

IV.

In August, 1916, the Congress of the United States passed, and there was approved as the law, on September 1st, 1916, a certain statute, it being chapter 432 of the United States Statutes of the Sixty-fourth Congress, in words and figures as set forth in Exhibit "A" hereto attached, and hereby made a part of this bill of complaint as fully as if herein set out.

V.

The defendant Fidelity Manufacturing Company constantly makes many shipments of its products in interstate commerce, as do also all other cotton mills of which plaintiffs have any knowledge, and the said defendant Fidelity Manufacturing Company and all of such mills are in constant operation; plaintiffs have been informed by defendant Fidelity Manufacturing Company that, upon the going into effect of the statute aforesaid, to wit, at the close of business on August 31st, 1917, and solely by reason of said statute and because the officers and managers of said corporation fear to incur the punishments and penalties provided by said statute if they violated any of the terms and provisions thereof, it would discharge the minor plaintiff John Dagenhart from its employment altogether, and would curtail the hours of employment of the minor plaintiff Reuben Dagenhart from the present basis of sixty hours, as is permitted by the laws of North Carolina and as said Reuben Dagenhart is now employed, to eight hours per day; with the result that there will be an entire loss of the earnings of the minor John Dagenhart and a corresponding reduction in the earnings of the minor Reuben Dagenhart received by the plaintiff Roland H. Dagenhart.

VI.

Plaintiffs are advised and believe that the statute aforesaid is not in truth and in fact law, and can not properly be enforced one year after its approval, to wit, September 1, 1917, nor thereafter, but that the said pretended law is unconstitutional, because:

1. It is not a regulation of commerce with foreign nations or among the several States or with the Indian tribes, such as Con-

gress is empowered to make by section 8 of Article I of the Constitution of the United States.

2. Its provisions forbidding a producer, manufacturer, or dealer to ship or deliver for shipment in interstate or foreign commerce any product of the factory wherein, within thirty (30) days prior to the time of the removal of such product therefrom children under fourteen years of age had been employed to work, or children under the age of sixteen years had been employed or permitted to work more than eight hours in any day, is without the power of Congress, because it is not a regulation of interstate or foreign commerce, but an attempt to regulate conditions and methods of manufacture.

3. It is within none of the powers delegated to the Congress of the United States by the Constitution of the United States or any of its amendments.

4. Its enactment by Congress is an attempted usurpation of the powers reserved in the Constitution of the United States to the States, respectively, or to the people, and is therefore in violation of the tenth amendment to the Constitution of the United States.

5. Its enforcement would deprive plaintiffs of their liberty and property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

## VII.

Plaintiffs verily believe and allege that, unless the enforcement of the said pretended, but unconstitutional, law is prevented, defendant Fidelity Manufacturing Company will carry out its threat and determination hereinbefore, in Article V hereof, alleged, and thus deprive the plaintiff Roland H. Dagenhart of his property in the labor of his sons and the compensation arising therefrom, and deprive each of said minor plaintiffs of his right to engage freely in a proper and wholesome vocation as authorized by the law of his State.

## VIII.

The defendant William C. Hammer, being, as hereinbefore alleged, the duly appointed, qualified, and acting United States attorney for the Western District of North Carolina, is charged by law with the duty to prosecute all violations of the law of the United States committed within this district, and by the terms of said pretended law itself, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of his district, without delay, for the enforcement of the penalties therein provided; plaintiffs believe and aver that he, the said William C. Hammer, unless restrained from so doing, will cause proceedings to be commenced and prosecuted for the enforcement of the penalties provided for by the said pretended law against the defendant Fidelity Manufacturing Company and other cotton manufacturers; plaintiffs further believe and aver that the said Fidelity Manufacturing Company and its officers

and managers also believe that the said William C. Hammer will cause such proceedings to be commenced and prosecuted, with the claim that each of the many shipments in interstate commerce constitutes a separate offense, and upon that belief have taken the action aforesaid and will carry out their threats.

Plaintiffs now aver on information and belief that, by reason of the act of Congress aforesaid, and the purpose of the district attorney aforesaid to enforce the same against the defendant Fidelity Manufacturing Company they will be deprived of their rights and property, the minor plaintiff John Dagenhart will be deprived
8 altogether of his right to work in the mill of said defendant corporation, and the minor plaintiff Reuben Dagenhart will be deprived of his right to work in said mill for more than eight hours in any one day; rights being accorded under the laws of North Carolina, and further, by reason thereof the plaintiff Roland H. Dagenhart will be deprived of the earnings of his two sons as aforesaid, to which he is justly entitled under the laws of the State of North Carolina.

## IX.

Plaintiffs are without adequate remedy at law in the premises, and only in a suit of this nature and by the injunctive processes of this court can they be fully protected in the enjoyment of their property and rights as aforesaid; the granting of the injunctive process as hereinafter prayed will prevent a multiplicity of suits and prosecution, and the questions here involved can be adequately determined only in a suit of this nature.

In consideration whereof plaintiffs pray:

First. That the aforesaid act of Congress be declared to be in violation and contravention of the rights of these plaintiffs, because not authorized by, but in violation of, the Constitution of the United States and the amendments thereof.

Second. That the defendant Fidelity Manufacturing Company be temporarily and permanently enjoined from, in any way or manner, by reason of the apparent force of said act of Congress, discharging the minor plaintiff John Dagenhart from its service or curtailing the employment of the minor plaintiff Reuben Dagenhart to eight hours per day.

Third. That the said W. C. Hammer and his successors, assistants, deputies, and agents be temporarily and permanently enjoined from, in any way or manner, enforcing against said defendant Fidelity Manufacturing Company or attempting to enforce the pro-
9 visions of the aforesaid statute or any part thereof, and from instituting or causing to be instituted any prosecution or proceeding as against said defendant Fidelity Manufacturing Company under the aforesaid statute or any of the provisions thereof.

Fourth. That, after due notice, temporary restraining orders be granted because of the fact, as alleged herein, that irreparable loss or

damage would result to these plaintiffs unless such temporary restraining order be granted.

Fifth. That plaintiffs have such other and further relief as is just and reasonable.

Sixth. And may it please your honor to grant unto plaintiffs a writ of subpœna of the United States of America directed to said Fidelity Manufacturing Company and to the said W. C. Hammer, United States attorney for the Western District of North Carolina as aforesaid, therein to be named, requiring them to appear before this honorable court, then and there to answer, but not under oath (the answer under oath being expressly waived), all and singular the premises, and to stand to, perform, and abide by, such order, direction and decree as may be made against them in the premises.

R. H. DAGENHART.

O'BRIEN, BOARDMAN, HARPER & FOX,
120 Broadway, N. Y.,
MANLEY, HENDON & WOMBLE,
Winston-Salem, N. C.,
*Solicitors for Plaintiffs.*

10 STATE OF NORTH CAROLINA,
*County of Forsyth.*

Before me, a notary public duly commissioned and sworn, personally appeared Roland H. Dagenhart, who being duly sworn deposes and says: that he is named as one of the plaintiffs in the foregoing bill of complaint, and that he has read the said bill and signed the same; that he knows that the said bill is true, except as to the matters and things therein stated upon information and belief and as to all such matters he verily believes it to be true.

R. H. DAGENHART.

Subscribed and sworn to before me this 9th day of August, 1917.

[SEAL.] B. WURREICHER, *N. P.*

My Com. expires Jany. 21, 1919.

11 EXHIBIT "A."

An act to prevent interstate commerce in the products of child labor, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of

fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution.

SECTION 2. That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board to make and publish from time to time uniform rules and regulations for carrying out the provisions of this act.

SECTION 3. That for the purpose of securing proper enforcement of this act the Secretary of Labor, or any person duly authorized by him, shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops, factories, manufacturing establishments, and other places in which goods are produced or held for interstate commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this act as may from time to time be authorized by appropriation or other law.

SECTION 4. That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this act, or to whom any State factory or mining or quarry inspector, commissioner of labor, State medical inspector, or school-attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided: *Provided*, That nothing in this act shall be construed to apply to bona fide boys' and girls' canning clubs recognized by the agriculture department of the several States of the United States.

SECTION 5. That any person who violates any of the provisions of section one of this act, or who refuses or obstructs entry or inspection authorized by section three of this act, shall for each offense prior to the first conviction of such person under the provisions of this act, be punished by a fine of not more than $200.00, and shall for each offense subsequent to such conviction be punished by a fine of not more than $1,000.00, nor less than $100.00, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this act for shipment, delivery for shipment, or transportation who establishes a guaranty issued by the person by whom the goods shipped or delivered for shipment or transportation were manu-

factured or produced, resident in the United States, to the effect that such goods were produced or manufactured in a mine or quarry in which within thirty days prior to their removal therefrom no children under the age of sixteen years were employed or permitted to work, or in a mill, cannery, workshop, factory, or manufacturing establishment, in which within thirty days prior to the removal of such goods therefrom no children under the age of fourteen years were employed or permitted to work, nor children between the ages of fourteen years and sixteen years employed or permitted to work more than eight hours in any day or more than six days in any week or after the hour of seven o'clock postmeridian or before the hour of six o'clock antemeridian; and in such event, if the guaranty contains any false statement of a material fact, the guarantor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violation of the provisions of this act. Said guaranty, to afford the protection above provided, shall contain the name and address of the person giving the same: *And provided further*, That no producer, manufacturer, or dealer shall be prosecuted under this act for the shipment, delivery for shipment, or transportation of a product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, if the only employment therein, within thirty days prior to the removal of such product therefrom, of a child under the age of sixteen years has been that of a child as to whom the producer or manufacturer has in good faith procured, at the time of employing such child, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions, and by such persons as may be prescribed by the board, show-
14 ing the child to be of such an age that the shipment, delivery for shipment, or transportation was not prohibited by this act. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violations of this act. In any State designated by the board, an employment certificate or other similar paper as to the age of the child, issued under the laws of that State and not inconsistent with the provisions of this act, shall have the same force and effect as a certificate herein provided for.

SECTION 6. That the word "person" as used in this act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term "ship or deliver for shipment in interstate or foreign commerce" as used in this act means to transport or to ship or deliver for shipment from any State or Territory or the District of Columbia to or through any other State or Territory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the State, Territory, or District of manufacture or production.

SECTION 7. That this act shall take effect from and after one year from the date of its passage.

Approved, September 1st, 1916.

15 And on the 9th day of August, 1917, an order to show cause was entered and filed.

Said order to show cause, filed August 9, 1917, is in words and figures as follows, to wit:

16 In the District Court of the United States for the Western District of North Carolina.

| | |
|---|---|
| ROLAND H. DAGENHART AND REUBEN Dagenhart and John Dagenhart by Roland H. Dagenhart, their prochein ami, plaintiffs, vs. FIDELITY MANUFACTURING COMPANY and William C. Hammer, United States Attorney for the Western District of North Carolina, defendants. | In Equity. At Greensboro, N. C. No. ——. |

*Order to show cause.*

On the reading and consideration of the bill of complaint herein filed, and on motion of Junius Parker and Clement Manly, Esquires, solicitors for the plaintiffs,

It is hereby ordered that the defendants, Fidelity Manufacturing Company and William C. Hammer, United States attorney for the Western District of North Carolina, and each of them, show cause, if any he or it has, before the judge of said court, at chambers, in the United States courthouse, Greensboro, N. C., Western District of North Carolina, on the 29th day of August, 1917, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, why the injunction should not issue pursuant to the prayer contained in the bill of complaint.

This the 9th day of August, 1917.

*JAS. E. BOYD, U. S. Judge.*

(Endorsed:) Received Aug. 10th, 1917. Executed Aug. 10, 1917, as to Wm. C. Hammer, United States attorney for the Western District of North Carolina, by delivering to him a true copy of the within order to show cause at Asheville, N. C. Chas. A. Webb, U. S. M. By J. F. Garner, D. M. Rec'd Aug. 11th, 1917. Executed Aug. 13th, 1917, by delivering to A. P. Rhyne, president of the Fidelity Manufacturing Company, at Charlotte, N. C., a true copy of the within order to show cause Chas. A. Webb, U. S. M. By E. S. Williams, deputy marshal.

17 And on the 9th day of August, 1917, subpœna in equity was issued.

Said subpoena in equity, issued August 9, 1917, is in the words and figures following, to wit:

United States of America. Western District of North Carolina. In the District Court Fourth Circuit at Greensboro.

*The President of the United States of America, to the Marshal of the Western District of North Carolina, greeting:*

You are hereby commanded to summons Fidelity Manufacturing Company and William C. Hammer, United States attorney for the Western District of North Carolina, citizens and residents in the State of North Carolina, if he be found in your district, to be and appear in the District Court of the United States for the Western District of North Carolina aforesaid, at Greensboro, on the 29 day of August, 1917, next, to answer a certain bill of complaint filed and exhibited in said court against them by Roland H. Dagenhart and Reuben Dagenhart and John Dagenhart by Roland H. Dagenhart, their prochein ami, citizens and residents in the State of North Carolina, to receive, perform, and abide any orders, judgment, or decree of the court made therein.

Hereof you are not to fail, under the penalty of law thence ensuing, and have you then and there this writ.

Witness the Hon. Jas. E. Boyd, judge of the District Court of the United States at Asheville, in said district, the 9" day of August, 1917, and in the one hundred and 42 year of the Independence of the United States.

[SEAL.]

Issued the 9th day of August, 1917.

R. L. BLAYLOCK,
*Clerk, U. S. District Court.*

The defendant is required to file his answer or other defense in the clerk's office, on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

(Endorsed:) Received Aug. 10th, 1917. Executed Aug. 10th, 1917, as to Wm. C. Hammer, United States attorney for the Western District of North Carolina, by delivering to him a true copy of the within equity subpoena, together with a copy of the bill filed in this cause. Chas. A. Webb, U. S. marshal, by J. F. Garner, deputy marshal. Rec'd Aug. 11th, 1917. Executed Aug. 13th, 1917, by delivering to A. P. Rhyne, president of the Fidelity Manufacturing Co., at Charlotte, N. C., a true copy of the within equity subpoena, together with a copy of the bill filed in this cause. Chas. A. Webb, U. S. M. By E. S. Williams, deputy marshal.

That on the 27th day of August, 1917, the defendant Fidelity Manufacturing Company filed answer to said bill of complaint.

Said answer filed August 27, is in the words and figures following, to wit:

21 In the District Court of the United States for the Western District of North Carolina.

ROLAND H. DAGENHART, AND REUBEN DAGENHART and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs,

vs.

FIDELITY MANUFACTURING COMPANY AND William C. Hammer, United States Attorney for the Western District of North Carolina, defendants.

In Equity. At Greensboro, N. C. No.——

*Answer to Bill of Complaint.*

The Fidelity Manufacturing Company, one of the defendants in the above-entitled action, for answer to the bill of complaint filed in said cause, says:

I.

This defendant admits that the plaintiffs are citizens and residents of the United States and of the Western District of North Carolina, and that the plaintiffs, Reuben Dagenhart and John Dagenhart, are minors, the sons of and residing with their father, Roland H. Dagenhart, and that Roland H. Dagenhart is their prochien ami, duly appointed for the purposes named; this defendant also admits that the Fidelity Manufacturing Company is a corporation duly organized under the laws of the State of North Carolina, with its principal office at Charlotte, in the Western District of said State, and that William C. Hammer is a citizen and resident of the United States and the Western District of North Carolina, and is the duly appointed, qualified and acting United States attorney for said Western District of North Carolina.

II.

This defendant admits that it is engaged in the operation
22 of a cotton mill at Charlotte, in Mecklenburg County, North Carolina, for the manufacture of cotton yarns and cloths; it also admits that the minor sons of Roland H. Dagenhart, to wit, Reuben Dagenhart and John Dagenhart, are employed in its said factory. This defendant also admits that it is advised and believes that the legislature of North Carolina has made provision regulating the employment of minors, in mills and factories, including cotton mills, and that the employment of each of said minor plaintiffs and his work have been and are in strict compliance with those legislative enactments, and in accordance with the law that obtains in the State of North Carolina. This defendant also admits that the minor

Reuben Dagenhart is over the age of fourteen years, but under the age of sixteen years, and that the minor John Dagenhart is under the age of fourteen years, and that each of said minor plaintiffs has been and is now in good health and capable of performing the services required of him, and that the work of each of said minors has been and is altogether in the production of manufactured goods, and that in their employment they have nothing whatever to do with the sale or other disposition or the transportation of the products of the factory, whether interstate or intrastate commerce. This defendant also admits that Roland H. Dagenhart is an employee in its said factory. This defendant admits that it is advised and believes that, under the law of the State of North Carolina, Roland H. Dagenhart is entitled to the services of each of his said minor sons until such minor shall arrive at the age of twenty-one years, but whether the compensation arising from the service of each of said minors is essential to
the comfortable support and maintenance of the family of
23 the plaintiff Roland H. Dagenhart including said minors, this
defendant has no knowledge or information sufficient to form a belief; this defendant admits that the compensation for the service of the said minor Reuben Dagenhart has been and is on the basis of piece work, and that the compensation for the service of the said minor, John Dagenhart, is on the basis of daily labor, and that the compensation for the services of each of said minors so arrived at has been and is paid to the plaintiff Roland H. Dagenhart periodically.

III.

This defendant admits that each of said minor plaintiffs has rendered efficient and satisfactory services to it, and that this defendant has made no complaint of the service rendered by either of said minor plaintiffs or of the compensation paid to the plaintiff Roland H. Dagenhart for said services; it is also admitted that each of said minor plaintiffs, and particularly the plaintiff Reuben Dagenhart has acquired skill and competency in said work, but whether it has been the purpose of the said Roland H. Dagenhart and of each of said minor plaintiffs that they should continue in cotton-mill work as their life vocation, this defendant has no knowledge or information sufficient to form a belief.

IV.

This defendant admits that it is advised, informed, and believes that in August, 1916, the Congress of the United States passed, and there was approved as the law, on September 1st, 1916, a certain statute, it being chapter 463 of the United States Statutes of the Sixty-fourth Congress; this defendant also admits that Exhibit "A" attached to plaintiff's bill of complaint is a true and correct copy of said statute.

V.

24 This defendant admits that, in the operation of its business, it constantly makes many shipments of its products in interstate commerce, and that it is in constant operation; this defendant also admits that it has informed the plaintiffs that, upon the going into effect of the aforesaid statute, to wit, at the close of business on August 31st, 1917, and solely by reason of said statute, and because the officers and managers of the said defendant corporation desire to obey the law of the United States, and particularly the said statute and all the terms and provisions thereof, that it will discharge the minor plaintiff John Dagenhart from its employment altogether, and that it will curtail the hours of employment of the minor plaintiff Reuben Dagenhart from the present basis of sixty hours, as is permitted by the laws of North Carolina.

VI.

This defendant denies that the said statute is not in truth and in fact law, and that it cannot properly be enforced one year after its approval, to wit, on September 1st, 1917, nor thereafter.

VII.

This defendant admits that, in obedience to the laws of the United States, unless the enforcement of the said law is prevented, it will discharge the minor plaintiff John Dagenhart from its employment altogether, and that it will curtail the hours of employment of the minor plaintiff Reuben Dagenhart from the present basis of sixty hours.

VIII.

This defendant admits that William C. Hammer, being the duly appointed, qualified, and acting United States attorney for the Western District of North Carolina, is charged by law with the duty to prosecute all violations of the law of the United States committed within his district, and that by the terms of the said statute,
25 it is his duty to cause appropriate proceedings to be commenced and prosecuted in the proper courts of his district without delay for the enforcement of the penalties therein provided; this defendant also admits that it is informed and believes that the said William C. Hammer will cause proceedings to be commenced and prosecuted for the enforcement of the penalties provided by said statute against this defendant and other cotton manufacturers, if they shall violate the provisions of the same; this defendant, its officers, and managers also admit that they are informed and believe that the said William C. Hammer will cause proceedings to be commenced and prosecuted for violation of the said statute with the claim that each of the many shipments in interstate commerce constitutes a separate offense.

This defendant, its officers and managers, admit that they will comply with the aforesaid act of Congress, and that the minor plaintiff John Dagenhart will not be employed to work in the mill of the said defendant corporation, and that the minor plaintiff Reuben Dagenhart will not be permitted to work in said mill for more than eight hours in any one day.

This defendant denies each and every allegation in said bill of complaint not hereinbefore specifically answered unto, and prays that it may be hence dismissed, with costs.

FIDELITY MANUFACTURING COMPANY,
By GEO. H. BROCKMEYER, *Secretary.*
E. B. JUSTICE,
*Solicitor for the Defendant*
*Fidelity Manufacturing Company.*

26 And afterwards, to wit, on the 29th day of August, 1917, a motion to dismiss was filed.

Said motion to dismiss, filed August 29, 1917, is in words and figures as follows, to wit:

27 In the District Court of the United States for the Western District of North Carolina.

| | |
|---|---|
| ROLAND H. DAGENHART, AND REUBEN DAGENHART and JOHN DAGENHART, by Roland H. Dagenhart, their prochein ami, plaintiffs, vs. FIDELITY MANUFACTURING COMPANY AND William C. Hammer, United States attorney for the Western District of North Carolina, defendants. | In Equity. At Greensboro, N. C. No. 218 E. |

*Motion to dismiss.*

Now comes William C. Hammer, United States attorney, and moves to dismiss this case because the bill which seeks to enjoin the enforcement of the act of Congress known as the child-labor law (39 Stat., 675), on the ground that it is unconstitutional and void, is without equity in that said act is valid and constitutional.

WILLIAM C. HAMMER,
*United States Attorney for the*
*Western District of North Carolina, Defendant.*
By E. MAURY UNDERWOOD,
*Assistant Attorney General.*
THOMAS L. PARAMORE,
*Special Assistant to the Attorney General.*
ROSCOE POUND,
*Special Assistant to the Attorney General.*

And afterwards, to wit, on the 31st day of August, 1917, a final decree was filed and entered of record.

Said final decree, filed August 31, 1917, is in words and figures as follows, to wit:

In the District Court of the United States for the Western District of North Carolina. At Greensboro.

ROLAND H. DAGENHART, AND REUBEN Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs,

vs.

FIDELITY MANUFACTURING COMPANY and William C. Hammer, United States attorney for the Western District of North Carolina, defendants.

In equity. No. 218.

This suit coming on to be heard and being heard before His Honor James E. Boyd, United States judge for the Western District of North Carolina, at Greensboro, North Carolina, August 29th, 1917, on the order to show cause why an injunction should not be issued as prayed for in the complaint, and the defendant Fidelity Manufacturing Company having filed its answer admitting the facts of the complaint as therein appears, and the defendant William C. Hammer, United States attorney for the Western District of North Carolina, having moved that the suit be dismissed on the grounds set forth in the said motion duly filed, and the court being of opinion that the said act of Congress is unconstitutional and without the power of Congress to enact,

It is now on motion of counsel for the plaintiffs ordered, adjudged, and decreed:

First. That the motion of William C. Hammer, United States attorney for the Western District of North Carolina, be and the same is hereby denied.

Second. That the defendant Fidelity Manufacturing Company be and it is hereby permanently enjoined from in any way or manner, by reason of the force of said act of Congress, discharging the minor plaintiff John Dagenhart from its service, or curtailing the employment of the minor plaintiff Reuben Dagenhart to eight hours per day;

Third. That the said William C. Hammer, United States attorney as aforesaid, and his successors, assistants, deputies and agents, he and they are hereby permanently enjoined from in any way or manner enforcing or attempting to enforce the provisions of the aforesaid act of Congress or any part thereof, and from instituting

or causing to be instituted any prosecution or proceeding under the aforesaid statute or any of the provisions thereof.

It is further ordered and adjudged that the plaintiffs recover of the defendants $———, the costs of this suit as taxed by the clerk.

This the 31st day of August, 1917.

Jas. E. Boyd,
*United States District Judge.*

31 And on the 1st day of September, 1917, an assignment of errors was filed.

Said assignment of errors, filed September 1, 1917, is in words and figures as follows, to wit:

33 In the District Court of the United States for the Western District of North Carolina. At Greensboro.

ROLAND H. DAGENHART, AND REUBEN Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs,

vs.

FIDELITY MANUFACTURING COMPANY AND William C. Hammer, United States attorney for the Western District of North Carolina, defendants.

In equity. No. 218 E.

*Assignment of errors.*

The defendant, William C. Hammer, applying in open court by counsel for an appeal to the Supreme Court of the United States and presenting herewith an appeal bond, now as their assignment of errors, shows the court erred:

1. In not sustaining the motion to dismiss the bill.

2. In not entering a decree dismissing the bill.

3. In not upholding the validity of the act of Congress approved September 1, 1916, commonly known as the child labor act, set forth in the bill.

4. In enjoining the said defendant, William C. Hammer, United States attorney, as prayed in the bill.

T. W. Gregory,
*Attorney General.*

35 And on the 1st day of September, 1917, a motion for appeal was filed.

Said motion for appeal, filed September 1, 1917, is in words and figures as follows, to wit:

34 In the District Court of the United States for the Western District of North Carolina. At Greensboro.

ROLAND H. DAGENHART, AND REUBEN Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs,

*vs.*

FIDELITY MANUFACTURING COMPANY AND William C. Hammer, United States attorney for the Western District of North Carolina, defendants.

In equity. No. 218.

The above-named defendant, W. C. Hammer, United States attorney for the Western District of North Carolina, conceiving that he is aggrieved by the decree made and entered in the above-entitled cause on the 31st day of August, 1917, having given notice of an appeal in open court in the presence of the attorneys for complainant, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

WM. C. HAMMER,
*United States Attorney.*

The foregoing petition for appeal is allowed.
This the 1st day of September, 1917.

JAS. E. BOYD,
*U. S. District Judge.*

35 And on the 1st day of September, 1917, an order allowing appeal was filed and entered of record.

Said order allowing appeal, filed September 1st, 1917, is in words and figures as follows, to wit:

36 In the District Court of the United States for the Western District of North Carolina. At Greensboro.

ROLAND H. DAGENHART, AND REUBEN Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochien ami, plaintiffs,

*vs.*

FIDELITY MANUFACTURING COMPANY and William C. Hammer, United States attorney for the Western District of North Carolina, defendants.

In equity. No. 218 E.

*Order allowing appeal.*

Be it remembered that in the above-entitled cause, on this 1st day of September, 1917, defendant William C. Hammer, United States

attorney, having made in open court his application for an appeal to the Supreme Court of the United States from the final decree of the district court entered August 31, 1917, and having also made and filed his assignment of errors, and having in all respects conformed to the statutes and rules of the court in such cases provided:

It is ordered and decreed that the said appeal be, and the same is, hereby allowed as prayed, and the clerk of said court is hereby directed to transmit forthwith a duly authenticated transcript of the record, papers, and proceedings on which said order and decree was made and entered to the Supreme Court of the United States.

JAS. E. BOYD,
*United States Judge.*

September 1, 1917.

37 And on the 17th day of September, 1917, a bond for appeal was filed.

Said bond for appeal filed September 17, 1917, is in words and figures as follows, to wit:

38 UNITED STATES OF AMERICA, Set.: Know all men by these presents that we, William C. Hammer, United States attorney for the Western District of North Carolina, and Richard C. Kelly, are held and firmly bound unto Roland H. Dagenhart and Reuben Dagenhart and John Dagenhart by Roland H. Dagenhart, their prochein ami, in the full and just sum of five hundred dollars, to be paid to the said Roland H. Dagenhart, as aforesaid and their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seal and dated this 1 day of September, in the year of our Lord one thousand nine hundred and seventeen.

Whereas on August 31, 1917, in the District Court of the United States for the Western District of North Carolina, in a suit depending in said court between Roland H. Dagenhart, and Reuben Dagenhart, and John Dagenhart by Roland H. Dagenhart, their prochein ami, plaintiffs, and Fidelity Manufacturing Company and William C. Hammer, United States attorney for the Western District of North Carolina, defendants, judgment and decree was rendered against the said defendants, and the said defendants have obtained an appeal of the said court to reverse the said judgment and decree in the aforesaid suit, and a citation directed to the said plaintiffs citing and admonishing them to be and appear in the Supreme Court of the United States sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said appellant shall prosecute said appeal to effect, and answer all dam-

ages and costs if he fail to make good his plea, then the above
39 obligation to be void, else to remain in full force and virtue.

Signed and sealed in presence of—

WM. C. HAMMER. [SEAL.]
RICHARD C. KELLY. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

JAS. E. BOYD,
*United States Judge.*

40 And on the 18th day of September, 1917, citation was issued to the said plaintiffs and on the 20th day of September, 1917, service of same was accepted by attorneys for plaintiffs.

Said citation, issued on September 18, 1917, is in words and figures as follows, to wit:

41 UNITED STATES OF AMERICA, *ss:*

*The President of the United States to Roland H. Dagenhart, and Reuben Dagenhart and John Dagenhart, minors, by Roland H. Dagenhart, their next friend, greeting:*

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in the city of Washington, D. C., on the 18th day of October next, pursuant to an appeal from a decree of the District Court of the United States for the Western District of North Carolina in your favor passed in a cause in said court wherein Roland H. Dagenhart, of full age, and Reuben Dagenhart and John Dagenhart, minors, by their next friend, Roland H. Dagenhart, are complainants and William C. Hammer, United States attorney for the Western District of North Carolina, is defendant, to show cause, if any there be, why the decree rendered against the said defendant in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jas. E. Boyd, judge of the District Court of the United States for the Western District of North Carolina, this 18th day of September in the year of our Lord one thousand nine hundred and seventeen.

JAS. E. BOYD,
*United States Judge.*

(Endorsed:) Service accepted, Sept. 20, 1917. Manly, Hendren & Womble, attorneys for plaintiffs, appellees.

42 And, on the 20th day of September, 1917, a stipulation was entered into.

Said stipulation entered into September 20, 1917, is in the words and figures following, to wit:

43 *Stipulation of counsel.*

In the District Court of the United States for the Western District of North Carolina.

ROLAND H. DAGENHART, AND REUBEN DAGENHART AND JOHN DAGENHART by Roland H. Dagenhart, their prochein ami,

*v.*

FIDELITY MANUFACTURING COMPANY AND WILLIAM C. HAMMER, United States attorney for the Western District of North Carolina.

In the above-entitled case it is agreed and stipulated by and between the appellant and counsel for the appellee that—

1. Bill of complaint and Exhibit "A."
2. Subpœna and return endorsed.
3. Order to show cause.
4. Answer of defendant Fidelity Manufacturing Company.
5. Motion to dismiss.
6. Final decree.
7. Assignment of errors.
8. Petition for appeal.
9. Order allowing appeal.
10. Bond on appeal.
11. Citation.
12. Stipulation.
13. Clerk's certificate.

shall constitute the complete record for the Supreme Court of the United States.

This the 20th day of September, 1917.

WM. C. HAMMER,
*United States Attorney*
*for the Western District of North Carolina.*
MANLEY, HENDREN & WORTHE,
*Attorney for Plaintiff Appellee.*

44 And afterwards, to wit, on the 20th day of September, 1917, an election as to printing was filed.

Said election as to printing, filed September 20, 1917, is in words and figures as follows, to wit:

45 In the District Court of the United States for the Western District of North Carolina. At Greensboro. No. 218E.

ROLAND H. DAGENHART, REUBEN DAGENHART AND JOHN DAGENHART, by Roland H. Dagenhart, their prochein ami, plaintiffs,

*vs.*

FIDELITY MANUFACTURING COMPANY AND WILLIAM C. HAMMER, United States attorney for the Western District of North Carolina, defendants.

Now comes the defendant, William C. Hammer, United States attorney for the Western District of North Carolina, and elects that

he record herein be printed by the clerk of the Supreme Court of the United States.

WM. C. HAMMER,
*United States Attorney*
*for the Western District of North Carolina.*

UNITED STATES OF AMERICA, Sct.

I, R. L. Blaylock, clerk of the District Court of the United States for the Western District of North Carolina, do certify that the above and foregoing is a full, true, and complete copy of the record, assignment of errors, and all proceedings in the case of Roland H. Dagenhart, Reuben Dagenhart and John Dagenhart, by Roland H. Dagenhart, their prochein ami, vs. Fidelity Manufacturing Company and William C. Hammer, United States attorney for the Western District of North Carolina, in equity No. 218E, as fully as the same appears on file and of record in my office.

Witness my hand as clerk and the seal of said court. Done at office in Greensboro, North Carolina, this 24th day of September, A. D. 1917.

[SEAL.]

R. L. BLAYLOCK,
*Clerk U. S. District Court.*

(Indorsed on cover:) File No. 26171. W. North Carolina D. C. U. S. Term No. 704. W. C. Hammer, United States attorney for the Western District of North Carolina, appellant, vs. Roland H. Dagenhart, and Reuben Dagenhart and John Dagenhart, minors, by Roland H. Dagenhart, their next friend. Filed September 26th, 1917. File No. 26171.

# In the Supreme Court of the United States.

OCTOBER TERM, 1917.

W. C. HAMMER, UNITED STATES ATTORNEY for the Western District of North Carolina, appellant,

*v.*

ROLAND H. DAGENHART, AND REUBEN Dagenhart and John Dagenhart, minors, by Roland H. Dagenhart, their next friend.

No. 708.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.*

MOTION TO ADVANCE.

Comes now the Solicitor General, appearing on behalf of appellant, and respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Appellees Reuben and John Dagenhart are the minor sons of appellee Roland H. Dagenhart, and were employed by the Fidelity Manufacturing Co., a corporation of North Carolina. After the passage of the so-called "child-labor law" of September 1, 1916, the minors, through their father as prochein ami, instituted in the District Court of the United States for the Western District of North Carolina a suit in equity against the Fidelity Manufacturing

Co. and William C. Hammer, United States attorney for the Western District of North Carolina, praying for an injunction restraining the Fidelity Co. from discharging the minors from its employ because of any provisions of the said "child-labor law," and also restraining the said United States attorney from enforcing against the Fidelity Co. any of the provisions of that law on the ground that the law is unconstitutional.

An order to show cause issued. The Fidelity Co. filed an answer, and the United States attorney a motion to dismiss the bill of complaint on the ground that the law is constitutional. The motion to dismiss was denied and the injunction directed in accordance with the prayer of the bill of complaint, the district court holding the "child-labor law" unconstitutional and beyond the power of Congress to enact. From this decree an appeal to this court was allowed by the lower court on petition of the United States attorney.

The case is of importance to the Department of Labor in the administration of the "child-labor law" and to the Department of Justice in the matter of enforcing the criminal provisions of that law. For these reasons and because the case is one of general public interest an early determination by this court is desirable.

Opposing counsel concur.

JOHN W. DAVIS,
*Solicitor General.*

JANUARY, 1918.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1917.

W. C. HAMMER, UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA, APPELLANT,

*v.*

ROLAND H. DAGENHART, AND REUBEN DAGENHART AND JOHN DAGENHART, MINORS, BY ROLAND H. DAGENHART, THEIR NEXT FRIEND.

No. 704.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.*

## BRIEF FOR APPELLANT.

### STATEMENT OF THE CASE.

This is an appeal by a United States District Attorney from a decree of the District Court declaring unconstitutional and enjoining him from enforcing the act of Congress of September 1, 1916, entitled "An Act To prevent interstate commerce in the products of child labor, and for other purposes," 39 Stat. 675, c. 432.

### STATUTE INVOLVED.

The channels of interstate transportation are closed to the products of child labor by the first section of the act, which is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America*

*in Congress assembled*, That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution.

The remaining sections contain appropriate provisions for enforcing the act, prescribe penalties for its violation, and define some of the terms used. The act is printed in full as Appendix "A."

GROUNDS OF ATTACK UPON THE ACT.

The bill is filed by a father, in his own behalf and as *prochein ami* for his two minor sons, one under the age of fourteen and the other between the ages of fourteen and sixteen, and both employed in the cotton mill of the Fidelity Manufacturing Company. The injunction restrains that company from discharging the former and from limiting the hours of work of the latter to eight hours in any day and six days in any week upon the going into effect of the above statute.

The grounds upon which the District Judge held the act unconstitutional do not appear, as no opinion was rendered, but those upon which the bill assails it are set out as follows (R. 3–4):

> 1. It is not a regulation of commerce with foreign nations or among the several States or with the Indian tribes, such as Congress is empowered to make by section 8 of Article I of the Constitution of the United States.
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> 2. Its provisions forbidding a producer, manufacturer, or dealer to ship or deliver for shipment in interstate or foreign commerce any product of the factory wherein, within thirty (30) days prior to the time of the removal of such product therefrom children under fourteen years of age had been employed to work, or children under the age of sixteen years had been employed or permitted to work more than eight hours in any day, is without the power of Congress, because it is not a regulation of interstate or foreign commerce, but an attempt to regulate conditions and methods of manufacture.

3. It is within none of the powers delegated to the Congress of the United States by the Constitution of the United States or any of its amendments.

4. Its enactment by Congress is an attempted usurpation of the powers reserved in the Constitution of the United States to the States, respectively, or to the people, and is therefore in violation of the tenth amendment to the Constitution of the United States.

5. Its enforcement would deprive plaintiffs of their liberty and property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

These contentions reduce themselves to three propositions:

(1) The act in question is not, in fact, a regulation of interstate and foreign commerce.

(2) It contravenes the Tenth Amendment to the Constitution.

(3) It is in conflict with the Fifth Amendment to the Constitution.

APPELLANT'S CONTENTION.

The assignments of error, found at page 16 of the record, challenge the holding that the act in question is unconstitutional. It is insisted in brief that:

(1) The act is both in terms and in fact a regulation of interstate and foreign commerce.

(2) The power of Congress, under the commerce clause, to regulate interstate and foreign commerce is absolute except as limited by other provisions of the Constitution itself.

(3) This act is not in conflict with any provision of the Constitution.

## ARGUMENT.

### I.

**The act is both in terms and in fact a regulation of interstate and foreign commerce.**

The terms of the statute, as its title implies, are directed to the shipment in interstate and foreign commerce of certain products. Sections 1 and 6 confine the operation of the act to such shipments, neither manufacture, nor shipment intrastate being included.

> SEC. 1. That no producer, manufacturer * * * shall ship or deliver for shipment in interstate * * * commerce * * * any article or commodity [having the quality specified].
>
> SEC. 6. * * * The term "ship or deliver for shipment in interstate or foreign commerce" as used in this act, means to transport or to ship or deliver for shipment from any State * * * to or through any other State * * *.

This court does not need to be reminded of the vital part which the commerce clause has played in the history of the Constitution and of the Nation. No evil arising from the weakness of the Confederacy operated more strongly to produce the Constitution of 1787 than the conflicting commercial regulations of the States. *Gibbons* v. *Ogden*, 9 Wheat. 1, 222; *Brown* v. *Maryland*, 12 Wheat. 419, 446. As was said in *Welton* v. *Missouri*, 91 U. S. 275, 280:

> The very object of investing this power in the General Government was to insure this

> uniformity against discriminating State legislation. The depressed condition of commerce and the obstacles to its growth previous to the adoption of the Constitution, from the want of some single controlling authority, has been frequently referred to by this court in commenting upon the power in question.

The trade restrictions of England began in 1783 to exclude American merchandise from the British West Indies. Massachusetts attempted to retaliate by positive legislation. Act of June 23, 1785, Laws & Resolves, Mass., 1784–5, p. 439. Other States saw in this only a means of attracting British shipping to their own ports. The act was repealed by act of July 5, 1786, Laws & Resolves, Mass., 1786–7, p. 36, which recited: "Whereas the good intentions of an act * * * are rendered inefficacious, for want of a cooperation of our sister States * * *." The individual attempt of Virginia was defeated for like causes. Remedy against the evil of the British trade restrictions was not to be found because some of the States by inaction made uniformity of regulation impossible. 5 Elliott's Debates, pp. 113, 119. The pertinency of this particular illustration will appear at a later stage of this argument. *Post*, pp. 23 *et seq.*

Unquestionably the power conferred upon Congress was plenary and embraced all the power which the States had previously enjoyed over the subject and "the power of a sovereign State over commerce, therefore, amounts to nothing more than a power to

limit and restrain it at pleasure." *Gibbons* v. *Ogden*, *supra*, 227.

Neither is there any longer room to question the fact that the transportation of goods from one State to another is such "commerce among the States" as Congress may regulate. *Welton* v. *Missouri*, 91 U. S. 275, 280; *Addystone Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424, 434. While doubt has existed as to how far back Congress may reach prior to the actual start of the goods on their interstate journey (*Coe* v. *Errol*, 116 U. S. 517; *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Loewe* v. *Lawlor*, 208 U. S. 274), and how far forward after the journey has ceased (*Brown* v. *Maryland*, 12 Wheat. 419; *McDermott* v. *Wisconsin*, 228 U. S. 115), it has never been doubted that when the actual transportation of commercial commodities from one State to another begins the jurisdiction of Congress at once attaches.

The act is upon its face a regulation. To regulate is "to prescribe the rule by which commerce is to be governed" (*Gibbons* v. *Ogden*, 9 Wheat. 1, 196); "to foster, protect, control and restrain" (*Second Employers' Liability Cases*, 223 U. S. 1, 47). It is now settled that one form of such regulation is prohibition. *In re Rahrer*, 140 U. S. 545; *Lottery Case*, 188 U. S. 321; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *United States* v. *Lexington Mill & Elevator Co.*, 232 U. S. 399; *Hoke* v. *United States*, 227 U. S.

308 (White Slave); *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311 (Liquor); *Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510 (Pure Food).

Indeed, it may be said that the denial of the facilities of interstate transportation to specified articles in terms precisely like those now in question has become a familiar and a customary method of regulation.[1]

The substantial connection between the regulation and the actual interstate movement (*Adair* v. *United States*, 208 U. S. 161) is not questioned in this case. The statute carefully avoids the difficulties in the first *Employers' Liability Cases*, 207 U. S. 463, by not

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[1] Act of May 29, 1884, 23 Stat. 31, c. 60, provides in sec. 6: "* * * nor shall any person, company, or corporation drive on foot or transport in private conveyance from one State * * * to another * * * any live stock * * *."

Act of May 9, 1902, 32 Stat. 193, c. 784, provides in sec. 5: "* * * and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State * * * or to any foreign country, until it has been marked * * *."

Act of June 29, 1906, 34 Stat. 584, 585, c. 3591, provides: "* * * it shall be unlawful for any railroad company to transport from any State * * * to any other State * * * or to any foreign country, any article or commodity * * * in which it may have any interest direct or indirect."

Act of June 30, 1906, 34 Stat. 768, c. 3915, provides in sec. 2: "That the introduction into any State * * * or shipment to any foreign country of any article of food or drugs * * * is hereby prohibited; and any person who shall ship or deliver for shipment from any State * * * to any other State * * * or to a foreign country * * * shall be guilty of a misdemeanor."

Act of June 25, 1910, 36 Stat. 825, c. 395, provides in sec. 2: "That any person who shall knowingly transport * * * in interstate or foreign commerce * * * any woman or girl for * * * immoral purposes * * * shall be deemed guilty of a felony."

Act of March 1, 1913, 37 Stat. 699, c. 90, provides: "That the shipment or transportation * * * of any spirituous * * * liquor of any kind from one State * * * into any other State * * * in violation of any law of such State * * * is hereby prohibited."

applying to that commerce which is wholly within one State.

Again, the act sharply distinguishes between the manufacture, which lies wholly within one State, and the interstate movement. No prohibitions are extended to manufacturers of goods as such, although they may intend subsequently to ship in interstate commerce. *United States* v. *E. C. Knight Co.*, 156 U. S. 1. A manufacturer may, notwithstanding the act, employ such children as he pleases. So long as he confines within the State of manufacture the shipment of his products the law does not touch him. It springs into activity only when actual transportation to another State begins, and seeks thereupon to prevent the evils which Congress believed to attend such commerce.

Whether the act is or is not a regulation of commerce among the States is of course a different question from that of its validity or invalidity as such; and it is with the former question only that we are for the moment concerned. That it is a regulation such as it purports to be is clear if the plainest and most unambiguous language can make it so. The contention to the contrary is in effect an attack upon the good faith of Congress and invites the court to assume that the language used, notwithstanding its explicit character, is a mere pretense adopted in order to cloak a usurpation of State power to make local police regulations. The act, however, must be read as it is written. Its character as a regulation can only be denied by reasserting the now obsolete

doctrine that the power to regulate does not embrace the power to exclude designated articles from the channels of commerce.

The power to regulate commerce, although plenary, is subject, however, to such limitations and restrictions as are prescribed by the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316, 423; *Lottery Case*, 188 U. S. 321, 362, 363; *Adair* v. *United States*, 208 U. S. 161, 179, 180. But it is not subject to limitation or restriction from any lesser source. The vital question in the instant case, therefore, is whether the attempted regulation contravenes any of the constitutional limitations. It is contended by the defendants in error that it violates both the Fifth and Tenth Amendments. The answer to these contentions will demand a prefatory consideration of the evils sought to be remedied by the act and the situation confronting Congress at the time of its passage.

## II.

### The situation confronting Congress and the evils to be remedied.

#### 1. Child labor, once regarded as harmless or beneficial, had come to be regarded as immoral and injurious.

It can not be denied that a change in public opinion regarding child labor has occurred like that in relation to lottery tickets. Neither the ticket nor the labor are inherently bad. But the facts of life have disclosed undeniable evils in the use of both. A

lottery was once a legitimate instrument for raising state revenues for schools, roads, and churches. So in the seventeenth and eighteenth centuries, that children should work was deemed so desirable that the colonists sometimes expressly ordered it by law.

> * * * work for children was prescribed because it was necessary; for ethical reasons, to avoid the pitfalls of idleness and promote habits of industry; and, in case of poor children, to relieve the town of the burden of maintaining them. (S. Doc. No. 645, 61st Cong., 2d sess., vol. 6, pp. 13, 14.)
>
> (p. 27) The change of front toward the employment of children in factories in the nineteenth century was slow, and necessarily so. The traditions existing before the Revolution could not be changed suddenly or without knowledge of the new evils. A long way had to be gone over before child labor could be transformed from a righteous and beneficial into an unrighteous and socially harmful thing.

In New England, as industry flourished and factories were set up,

> (*Id.* p. 30) The first murmur against the factory system for children arose not from solicitude for their health, but from the interest in education. * * *

The first child-labor law of the nineteenth century was passed in 1813 in Connecticut (*id.* p. 90). It required the proprietors of manufacturing establish-

ments to cause children "whether bound by indenture, by parol agreement, or in any other manner," to be taught reading, writing, and the first four rules of arithmetic. Session Laws, 1813, c. 2.

Massachusetts followed with a provision that no child under the age of 15 should labor in any manufacturing establishment unless he had attended school three months of the year. Acts and Resolves of Massachusetts 1836, c. 245.

With the growth of industrial activity in the latter part of the nineteenth century the far-reaching effects of the employment of children in factories became manifest. The dangers to persons of tender years in working about machinery are apparent to everyone. But the evil effects on the child's physical well-being were shown by medical science to be not confined to the so-called dangerous occupations. Night work and excessive hours of labor indoors in factories at a critical stage in the development of the child's body stunt the physique and decrease the resistance to disease.

The House Committee report refers to the alarming percentage of deaths from tuberculosis among female operatives in cotton mills in Massachusetts, and states:

> "Operatives, thus, of the most youthful age group were four times, those of the post-puberty group were twice, and those of the young adult group—20 to 24—were about two and a half times as liable to die from

tuberculosis as were, respectively, the girls of like age that did not work in cotton mills." (H. Rept. No. 46, 64th Cong., 1st sess., p. 22.)

The Senate Report (No. 358, 64th Cong., 1st sess.) states:

> (p. 14) With regard to accidents * * *. Although the children are employed in relatively nonhazardous occupations, "the rate for the child is more than double that for the older worker."
>
> (p. 11) The evidence is overwhelming that unregulated child labor does not promote a healthy citizenship; that it tends to the deterioration of the race physically; to the dwarfing of the children mentally through the denial of a full opportunity for education; and to criminality, since the statistics of our juvenile courts show that by far the largest percentage of juvenile delinquents are the children who are put to work too soon rather than the children who are trained in the schools.

In the Senate it was stated:

> During the Boer War it is true that in Manchester, the home of the factory child, 8,000 out of 12,000 recruits were rejected as utterly unfit, and of the 4,000 retained only a scant 1,000 were really up to the requirements, and it is said that comparison with the recruits of the Crimean War half a century before proved that the average height had decreased 3 inches, and the average weight about 30 pounds. (53 Cong. Rec. 3024).

See also 41 Cong. Rec., pt. 2, p. 1805; British Sessional Papers, 1904, vol. 32, "Reports from Commissioners, etc., Physical Deterioration Committee," Cd. 2175, vol. II, pp. 14, 81, 82, 225.[1]

Medical opinion is practically unanimous on the subject (H. Rept. No. 46, 64th Cong., 1st sess., pp. 12–13, 21, 29–32). The child worker becomes dwarfed in body and mind. The State is deprived of that vigorous citizenship upon which the success of democracy must depend. The child loses his birthright to share as a man in the opportunities of his fellows. The conviction has become general that child labor, denominated more incisively as "child slavery" (41 Cong. Rec., 1553, 1556), iniquitous in its results as the slavery resulting from prostitution, pernicious as that consequent upon addiction to liquor, is immoral.

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[1] The Bulletin of the Bureau of Labor, No. 89, July, 1910, states (p. 413):

"The examination in Appenzell Outer Rhodes of recruits for military service led Doctor Wiesmann in 1903 to investigate why this Canton had to reject twice as many young men as the average for Switzerland as a whole, on account of low stature, narrow chests, weakness, anaemia, and arrested growth. (Zeitschrift fur schweizerische Statistik, 1904. Of 7,760 men examined only 3,604 were fit for military service)."

Among the causes assigned by Dr. Wiesmann was "the premature and excessive labor of immature boys" (p. 413).

From the same bulletin it appears that the first child-labor law on the Continent was enacted in Prussia in 1839 (p. 232):

"Von Altenstein, who became the champion of child-labor restriction in Prussia, thereupon issued a letter of instruction on April 27, 1827, insisting that the education of young children must not be neglected. But so mild a measure was of no avail; and conditions might have long continued as they were had it not been for the declaration of the military authorities that the factory districts were unable to furnish their quota of young men fit for admission to the army."

In *Inland Steel Co.* v. *Yedinak*, 172 Ind. 423, upholding the constitutionality of the Indiana Child Labor Law, the court said (p. 435):

> The employment of children of tender years in mills and factories not only endangers their lives and limbs, but hinders and dwarfs their growth and development physically, mentally and morally. The State is vitally interested in its own preservation, and, looking to that end, must safeguard and protect the lives, persons, health and morals of its future citizens.

The result was, as stated in *Starnes* v. *Albion Manufacturing Co.*, 147 No. Car. 556, 559, 560, a suit for personal injuries suffered by a boy under 12 years of age in running a carding machine in a cotton factory,

> that child labor laws have been adopted in nearly all of the States of this Union and Canada and are in force in nearly all the governments of Europe and of the Australian Continent. * * * The statute we are considering appears to have been framed in good faith and for the purpose of promoting the general welfare by protecting minors from injury by overwork, from liability to injury by machinery in large manufacturing establishments, and by facilitating their attendance at schools.

**2. Regulations in the States were not uniform.**

The empirical judgment of the people in the vast majority of the States had accordingly found expression in criminal statutes at the time of the passage of the act in question. The majority prohibited

children under 14 from working in factories and canneries. A large number forbade night work by children under 16; their employment more than 8 hours a day; and condemned altogether their employment in mines and quarries.

Many States, however, were without the provisions which came to be regarded as the due standard necessary for the public protection. Senate Report No. 358, 64th Congress, 1st session, pp. 9, 11. The statutes now in force are collected in Appendix "B."

**3. The result was an unfair discrimination in interstate commerce.**

Interstate commerce is not a technical legal conception but a practical one, drawn from the course of business. *Swift* v. *United States*, 196 U. S. 375, 398. In the day of steam and electricity the play of the forces of competition makes the cause operating in one State immediately felt in another. The slightest difference in the cost of production, or what amounts to the same thing, a belief on the part of manufacturers in the existence of such difference, alters the development of an industry. The phenomenal growth of cotton manufacturing in the Southern States in the last three decades has been due perhaps in no small measure to the employment of child labor. [1]

[1] The capital in New England invested in cotton manufacturing establishments increased from $243,153,249 in 1890 to $276,039,821 in 1900, or 13.5 per cent; as compared with an increase in the Southern States, almost wholly in the States of North Carolina, South Carolina, Georgia, and Alabama, of $53,827,303 to $124,596,874, or 131.5 per cent. (12th United States

As the conviction grew that the employment of child labor was morally repugnant and socially unwise, it came to be regarded also in the light of unfair competition in trade among the States. The State authorizing the use of such labor in products

Census (1900), Manufactures, Textiles, p. 54.) The increase in the number of spindles in the Southern States in the same decade was 2,744,188, or 176.6 per cent, whereas in New England the increase was 2,014,832 spindles, or 18.6 per cent. (12th U. S. Census, *supra*, p. 46.) Subsequent corresponding growth for 1909 and 1914 is shown in census of manufactures, 1914, Cotton Manufactures, pp. 5, 21, 31.

See "Cotton Manufacturing Industry," Copeland, pages 51, 52.

In the Census Office Report on Manufactures, Textiles, 1900, p. 32, appear the following tabular figures referring to "cotton goods":

| Division. | Children (under 16 years): Per cent of all wage earners. | | |
|---|---|---|---|
| | 1900 | 1890 | 1880 |
| United States | 13.4 | 10.7 | 16.4 |
| New England States | 6.7 | 6.9 | 14.1 |
| Southern States | 25.0 | 24.2 | 25.1 |

Similar comparative figures for children under 16 appear for 1909 in Volume X, 1910 Census Report on Cotton Manufactures, Table 46, p. 64; and for 1914 in Census of Manufactures, 1914, Cotton Manufactures, Table 51, p. 32.

For examples of large branches of New England cotton mills established in South Carolina, Georgia, Alabama, and North Carolina, see Official American Textile Directory, 1917, pages 101, 103, 125, 357, 362; Clark's Directory of Southern Textile Mills, twelfth edition, 1917, page 99.

Mr. Lippitt said in the Senate (53 Cong. Rec., pt. 12, p. 12308):

"* * * the only reason why the cotton manufacturing industry was ever established in the South was on account of the humanitarian labor laws that were enacted in Massachusetts and in Rhode Island and Connecticut.

"* * * what first happened was that the South swept out of New England the manufacture of almost every pound of yarns, and goods made out of yarns, coarser than No. 20; all the drills, the first great fabric, the production of which the South has taken out of the hands of the New England mills, and they had to substitute other fabrics and more difficult fabrics to manufacture."

See also U. S. Industrial Commission of 1900 Report, vol. 19, p. 922.

shipped into other States was thought unfairly to discriminate against the citizens of the latter.

The Industrial Commission created by act of June 18, 1898, 30 Stat. 476, c. 466, stated in its final report, volume 19, page 922:

> Uniform, or at least similar, legislation in the various States is especially desirable in the case of laws restricting child labor, because in so far as the employment of children is a real economy, it gives manufacturers in the States where it is permitted an unfair advantage over those in the States having child-labor laws.

In 1914 Representative Rogers, of Massachusetts, voiced this thought in the House:

> A State can not complain if it is fairly and squarely outdistanced in keen competition for the business of the Nation and of the world. * * * The only question which under these circumstances Massachusetts has the right to ask of its rivals is, "Are you competing fairly?" (51 Cong. Rec., pt. 17, 63d Cong., 2d sess., p. 1047; see also p. 1054.)

In the Sixty-third Congress the Palmer-Owen child-labor bill (H. R. 12292) passed the House February 15, 1915 (52 Cong. Rec., pt. 4, p. 3836). The favorable House report devoted attention to the point (H. Rept. 1400, 63d Cong., 3d sess., pp. 7–9). Witnesses before the committee had stressed it. For instance, Mr. Brinton, of Philadelphia, said (the testimony is reprinted in the Hearings before

the Committee on Labor, 64th Cong., 1st sess., on H. R. 8234, p. 270):

> Mr. BRINTON. Gentlemen of the committee, from Pennsylvania we come to this hearing with high hopes. Session after session at our legislatures we have been met by the cry from the manufacturers, "State legislation is unfair. You ask us to compete with other States of different standards. This interstate competition will ruin our business. If we must advance, let us advance together." It is to meet this argument, which however unfounded in fact it may be in any particular instance, is yet the most effective argument that confronts the child-labor cause in America to-day, that this bill has been introduced, * * *.
>
> The condition which confronts us to-day is therefore in actual fact largely a problem of interstate competition through interstate commerce; a condition emphasized in every child-labor campaign in every State; a condition certain to grow more hopeless as conditions of competition become constantly more intense. Interstate commerce is at the root of the evil as it exists to-day.

Another witness said (Hearings, *supra*, p. 283):

> * * * It is unfair competition—and this is an economic fact, it seems to me, which lies at the basis of this whole constitutional argument—for a man in one State to exploit child labor for the purpose of cheapening the product. I agree entirely with other wit-

nesses here, that the manufacturer in the long run is in error.

* * * This act is to protect the manufacturers and producers who wish not to exploit child labor from being subjected to unfair competition of those who do * * *.

In the debate on the present law Senator Kenyon said (53 Cong. Rec., pt. 3, p. 3026):

* * * It is perfectly apparent that it tends to bring about a condition of unfair competition where the manufacturer of one State may employ children over 12 or 14 and in another adjoining State can not employ them under 16. Likewise the different States in their laws differ as to night work, differ as to the method of proving age, as to the certificates of employment. * * * It is a national problem. These children are growing up to be citizens of the Nation as well as the State.

* * * Senator Beveridge, in his speech in the Senate some years ago, said: "Childhood labor in any State lowers manhood labor in every State." Childhood labor in some States means bayonets at Lawrence, Mass. Child labor in one State may mean a strike in another State for a living wage.

Mr. Lenroot in discussing the bill said (53 Cong. Rec., pt. 2, p. 1585):

* * * Because if it is within our power to prohibit interstate commerce for the purpose of preventing frauds upon the public, we have

> the same power to prohibit interstate commerce that may produce unfair competition in the public.
>
> The gentleman's own committee reported a bill, which passed this House and is now the law, with reference to unfair competition. Will the gentleman say when a vast majority of the States of this Union have rigid child-labor laws and a few States of the South permit little children, 8, 9, or 10 years old, to work in their factories that that is fair competition with these Northern States where they are not permitted to employ children under 14 years old? Is not that as clearly within our power as the power to prevent frauds in the misbranding of goods?

See also 53 Cong. Rec., pp. 1575, 2014, 12308; App., pt. 14, pp. 206, 212, 239, 245.

The Senate Committee report on the present law reads as follows (S. Rept. No. 358, 64th Cong., 1st sess., p. 21):

> * * * So long as there is a single State which for selfish or other reasons fails to enact effective child-labor legislation, it is beyond the power of every other State to protect effectively its own producers and manufacturers against what may be considered unfair competition of the producers and manufacturers of that State, or to protect its consumers against unwittingly patronizing those who exploit the childhood of the country.

**4. Citizens in the States in which child-labor products were introduced through interstate commerce were made unwilling parties to practices deemed immoral.**

House Report No. 46 on the Child Labor bill, Sixty-fourth Congress, contains the suggestion (p. 16):

> That the consumer shall be protected from partnership with the exploiters of child labor through the unwitting purchase of goods manufactured by child labor.

A statement from a witness, A. J. McKelway, is quoted (p. 16):

> It is because no microscope will tell whether a piece of cotton cloth has been manufactured by adult labor or by child labor that I have all the more right to demand that the Federal Government protect me from partnership with the exploiters of childhood through purchasing child-made goods.

The fact is adverted to in the Congressional debates. Representative Keating presented the following quotation (53 Cong. Rec., pt. 14, p. 240 App.):

> What enlightened sentiment demands is not only that the children in our own communities shall not be exploited, but that we shall not be forced against our will and better judgment to encourage child labor by purchasing the products of such labor. We have not the power to protect ourselves against such complicity as States, because we have abandoned to the Nation the right to control interstate commerce. The Nation, therefore, should step in and exercise the power of which we have bereft ourselves.

Mr. Kenyon said in the Senate (*id.*, pt. 3, p. 3052):

> You can go on in your State if you are not going to carry those child-labor goods out to other States, but when you do, those people have a right to know. You have no right to ship it to a place where it offends the moral conscience. * * *
>
> * * * He has a right to know what he buys. He knows he is buying an article, but he can not tell which are made by children and which are not made by children. He knows that in his State they would not be made by children. He has a right to know by whom the goods were made. In other words, the consumer has some right on the moral health proposition, because the people of this country do not want to encourage the labor of mere children by buying products from the mills employing them. So you have to consider the consumer in that matter, too. * * *

**5. The health of children in competing States was injuriously affected by the interstate transportation of child-made goods.**

Cotton manufacturers in the various States meet in the markets of interstate competition. Goods are shipped to New York from Georgia, North Carolina, Pennsylvania, and the New England States. Neither North Carolina, Georgia, nor Pennsylvania limit the employment of children under 16 to eight hours a day. Georgia, let us say, desires to make such a limitation. The legislature is at once met by the argument that if the law is enacted Georgia manufacturers can not compete with the manufacturers of the neighboring State. The shipment

of goods in interstate commerce by the North Carolina manufacturers therefore operates to deter the State of Georgia from enacting laws it would otherwise enact for the protection of its own children.

The manufacturers' argument in the State legislatures is based upon the belief that child labor is cheaper. There is much reason for thinking this belief mistaken. Scientific experiments in this country, and experience in Britain since the war, seem to have demonstrated that cheap labor is not efficient; that increased hours do not necessarily mean increased output; and that the employer of adult labor is not at a disadvantage with the employer of children.[1] But the fact of the common belief of the manufacturers, of their insistent arguments before State legislatures, and of the resultant effect in postponing or relaxing State legislation with reference to child labor, can not be denied.

No argument has been heard against child-labor legislation in the States more frequently or with greater effect than this.

Witnesses before a Pennsylvania investigating committee as long ago as 1838 "expressed their fear that any reduction of the hours of labor, or the prohibition of child labor, so long as it could apply

[1] See H. Rept. 46, 64th Cong., pp. 20, 25, 26; U. S. Bureau of Foreign and Domestic Commerce, Misc. Ser. No. 37, 1916, p. 31; H. Doc. 643, 62d Cong., 2d sess, p. 12; "Fatigue and Efficiency," by J. Goldmark, pp. 138–166; Bulletin 221, Bureau of Labor Statistics, pp. 33, 34, 39, 41; Chi'd Labor in Warring Countries, Department of Labor, Children's Bureau, Pub. No. 27, p. 9; Memorandum No. 20, Health of Munition Workers Committee, Ministry of Munitions, October, 1917 (Cd. 8801), Weekly Hours of Employment, p. 4.

only to Pennsylvania, must result disastrously to manufacturers in their competition with others not similarly restricted." "Factory Legislation in Pennsylvania: Its History and Administration," by J. L. Barnard, Publications, Univ. Pa., Series in Pol. Econ. and Pub. Law, No. 19, p. 14. The argument was heard in Massachusetts in the fifties. "Labor Laws and their Enforcement" with reference to Massachussetts, by S. M. Kingsbury, p. 83. In New York, F. R. Fairchild records in "Factory Legislation of the State of New York" (Publications Am. Econ. Assn., p. 45):

> Throughout the agitation for a factory law, all efforts had been vigorously opposed by the manufacturers of the state, who were represented by strong lobbies at Albany whenever factory bills were before the legislative committees. * * * They threatened personally to take their own factories out of the state if the bills were passed, and it was this argument more than any other which proved fatal from year to year.

See also as to Rhode Island, J. K. Towles "Factory Legislation of Rhode Island" (Am. Econ. Assn. Quarterly, October, 1908, p. 68).

The argument was early encountered in England. In "Hard Times" Dickens refers to the calamity which befell Coketown when the laboring children had to be sent to school (c. 17, Harper & Bros., 1883, p. 116):

> The wonder was, it was there at all. It had been ruined so often, that it was amazing how

> it had borne so many shocks. Surely there never was such fragile chinaware as that of which the millers of Coketown were made. * * * they were ruined when they were required to send laboring children to school; they were ruined when inspectors were appointed to look into their works; they were ruined when such inspectors considered it doubtful whether they were quite justified in chopping people up with their machinery. * * * Whenever a Coketowner felt he was ill used—that is to say, whenever he was not left entirely alone, and it was proposed to hold him accountable for the consequences of any of his acts—he was sure to come out with the awful menace that he would "sooner pitch his property into the Atlantic."

In France in the thirties, employers admitted the disastrous effects of child labor, but "insisted that it was impossible for them separately to remedy the evil, and that the necessities of competition forced all to adopt like methods to economize in expenses of production." Bulletin, Bureau of Labor, No. 89, p. 144.

An interesting sidelight is furnished by the experience of the European States before the war. An international conference was called to meet in Berne in September, 1913, to consider the question of an international treaty providing for the prohibition of night work of young persons. The United States Department of Labor, Bureau of Labor Statistics, Bulletin No. 117, reprints a memorandum prepared for this conference. Under chapter VI, entitled

"Advantages of International Regulation," appears the following (Bulletin No. 117, p. 62):

> Thus, Mr. Leveque, divisional inspector at Lille, declares that it will not be possible to suppress night work in sheet-glass factories unless all the States concerned give their consent.
>
> It is constantly argued that if one State alone took the initiative in this matter, the expenses of production of establishments employing only adults at night would be greater than in the case of those authorized to employ young persons. * * *
>
> (p. 63) * * * The night work of children between 12 and 14 should therefore not be tolerated in any circumstances, because even the employment by day of children of that age reacts unfavorably upon the vital forces of nations. In their petitions to the Reichstag and Bundesrat, the German glass manufacturers lay stress upon the effects of the competition which they encounter in consequence of the admission to employment of children of 12 years of age at night in France * * *.

The Swiss federal government addressed a circular letter to the powers on December 30, 1913, calling a further international conference for September 3, 1914. Bulletin of the International Labor Office (1914), p. 62. Negotiation of actual treaties was cut off by the war. A similar international convention prohibiting night work for women had been previously ratified

by thirteen powers. See Bulletin of the New York Department of Labor for December, 1906, vol. 8, No. 4, p. 506; *People* v. *Charles Schweinler Press*, 214 N. Y. 395, 403.

The Cantons of Switzerland at first had independently regulated the work of children. Bulletin No. 89, Bureau of Labor, 1910, states (p. 335):

> * * * In the Cantons having a relatively severe legislation manufacturers naturally complained that they were placed at a serious competitive disadvantage when compared with the Cantons having less strenuous laws or having no labor laws at all.
>
> * * * Numerous conferences were held, notably at Berne in 1859 and 1864. But they accomplished nothing of significance, except to make it fairly evident that the only way to secure uniformity would be by means of federal action.

The necessary power to establish uniform regulations was conferred upon the Swiss Confederation by the new constitution of 1874. Bulletin, *supra*, p. 337.

The effect on one community of the importation from another of the products of cheap labor has been recognized by Congress in dealing with foreign commerce. Since 1894 the importation of convict-made goods from foreign countries has been prohibited: Act of August 27, 1894, 28 Stat. 509, 552, c. 349, sec. 24; act of July 24, 1897, 30 Stat. 151, 211, c. 11, sec. 31; act of August 5, 1909, 36 Stat. 11, 87, c. 6, sec. 14; act of October 3, 1913, 38 Stat.

114, 195[1], c. 16. The exclusion was designed not to prohibit convict labor in foreign countries but to prevent the lowering of standards in this country. The theory of much of our tariff legislation is the same. The legislative design is to protect American industry and the American workman, although of course the premises of the legislature have been assailed by not a few on the ground that cheap wages do not necessarily mean low labor costs. The "phossy-jaw" act of April 9, 1912, 37 Stat. 81, c. 75, sec. 10, forbids the importation of white phosphorous matches on the same principle, for the protection of the laborer in match factories, who was the victim of necrosis, or the "phossy-jaw." In the immigration law the introduction of alien-contract laborers is prohibited. The act was construed in the *Holy Trinity Church* case, 143 U. S. 457, and in *Scharrenberg* v. *Dollar Steamship Co.*, 245 U. S. 122, not to apply to persons outside the class of unskilled laborers, who would "enter into competition" (p. 127) and "reduce other laborers engaged in like occupations to the level of the assisted immigrant." This court said in the *Scharrenberg* case (p. 126):

> The purpose of this alien labor legislation was declared by this court almost thirty years ago, in *Holy Trinity Church* v. *United States*, 143 U. S. 457, to be, to arrest the bringing of an ignorant, servile class of foreign laborers into the United States, under contract to work

[1] During the debate on the last tariff law an effort was made to amend the section by including child-made goods as being on the same plane. 50 Cong. Rec., pt. 4, pp. 3955, 3957.]

at a low rate of wages, and thus reduce other laborers engaged in like occupations to the level of the assisted immigrant.

The actual effect of the competitive argument upon legislation and consequently upon the health of children in the competing States is remarkable. In volume 6 of the "Report on Condition of Woman and Child Wage-Earners in the United States" (Sen. Doc. No. 645, 61st Cong.) a study is made of the efforts of South Carolina to regulate the labor of children. The provision prohibiting the employment of children under 12, as finally enacted in 1903, was proposed and defeated in 1900, 1901, and 1902. The report states (p. 152):

> The manufacturer's chief argument was that it was an infant industry bringing wealth into the State and it should be protected. One manufacturer went so far as to say that the child-labor bill, with its 12-year age limit, might be called "a bill to discourage manufacturing in South Carolina." The old argument that labor legislation would drive off capital was brought out. The absence of labor legislation in Georgia and Alabama had enticed New England manufacturers, and if they had restrictive laws in South Carolina every outside manufacturer would give them a wide berth. Moreover, the operatives would move to North Carolina and Georgia to obtain employment for their children, so that labor already scarce enough would become still scarcer.

In the same volume the efforts to secure legislation in Georgia are narrated. The argument against proposed child-labor bills, which proved effective, was as follows (p. 176):

> This legislation had not been enacted by any other Southern State and it would be unfair to Georgia and would drive away our capital both within and without the State to other States where mills were not regulated.

See also same volume, pages 160, 178, 179, 194, and 196.

In support of his amendment in 1907 Senator Beveridge submitted the following to the Upper House (41 Cong. Rec., pt. 2, p. 1817):

> * * * In 1887 a law was passed in Alabama limiting the hours of children's work in factories to eight a day.
>
> At the instigation of Massachusetts mill owners this law was repealed in December, 1894, on their promise that these mill owners would establish a factory in Alabama. * * *
>
> Much of the opposition to the passage of a protective law to the southern legislatures is made by the representatives of northern corporations, who are taking full advantage of the possibility of child labor. * * *

Testimony to the same effect is in the report of the United States Industrial Commission of 1900 (vol. 7, pp. 619, 760).

The law evidently referred to is the act of December 5, 1894, Laws of Alabama, 1894–1895, p. 18, repealing the act of February 28, 1887, which forbade

children under 14 years of age to labor in a mechanical or manufacturing business more than eight hours in any day.

Mississippi by act of March 16, 1912, Laws of Mississippi, 1912, p. 173, prohibited more than eight hours work a day, night work and Sunday work for boys under 16 and for girls under 18. In 1914, the age limit was reduced for cotton mills to 14 years for boys and 16 years for girls. Act of March 10, 1914, Mississippi Laws, 1914, p. 212. The complaint against the stress of competition with neighboring States thus had its effect.

The effect of the familiar argument came to light in the hearings before the Commission on Industrial Relations created by act of August 23, 1912, 37 Stat. 415, c. 351. Final Report, vol. 11, pp. 10501, 10602; Sen. Doc. No. 415, 64th Cong., 1st sess. A specific instance was cited of a defeat of a child-labor bill in Texas because of the "disadvantage in competition with other States" (*id.*, p. 10511).

In discussing in the Senate the bill which became the law now in question Mr. Husting said (53 Cong. Rec., pt. 12, p. 12208):

> * * * I know, however, that in my State and in my legislature when the child-labor proposition was approached, when the income tax was approached, or any other similar measure was approached, it was held up to us that we were going to ruin our own manufacturers by passing laws in Wisconsin which would render manufacturing less profit-

> able, while in the State right next to it, where these things were not prohibited, they would enjoy increased profits by reason of not passing this legislation. So we are now confronted with that argument, and that is a stock argument used in every legislature in the country. I know it was used with effect in my own State: "You can not do this because Illinois does not do it, or Indiana does not do it, or North Carolina does not do it, or Florida does not do it; and if you are going to make our manufacturers compete against these other men, who have the freedom of employing child labor in their mills, and make us sell our goods in competition with theirs, you are going to ruin us. You must not do it."

Mr. Keating submitted the following (*id.*, pt. 15, p. 1807):

> The child labor bill is denounced as an invasion of State rights. * * * Nevertheless, it seems to us, truth runs the other way about. * * * For when child-made goods are given access to interstate commerce the effect in many instances, if not in all, is to balk the State which either has legislated against child labor or contemplates doing so.

See also 53 Cong. Rec., pt. 2, pp. 1571, 2029–2030; pt. 12, p. 12064, 12295; pt. 14, p. 257 App.; 41 Cong. Rec., pt. 2, p. 1819; H. Rept. 46, 64th Cong., 1st sess., p. 13. The same facts appear from reports of the Committee Hearings on H. R. 8234, pp.257, 260–261, 289.

Massachusetts brought the matter to the attention of Congress in a formal memorial presented April 23, 1910, 45 Cong. Rec., pp. 5245, 5246:

> Whereas the employment of young children in factories, mines, and workshops under circumstances fatal to the health and happiness of the children has reached such a magnitude as to become a national evil and disgrace; and
>
> Whereas the exercise by Congress of all its constitutional powers upon this subject is needed to protect our children and their health and happiness: Therefore be it
>
> *Resolved*, That the General Court of Massachusetts earnestly requests the Congress of the United States to enact national and uniform laws regulating the employment of children: Be it further
>
> *Resolved*, That a copy of these resolutions be sent to the Senators and Representatives in Congress from this Commonwealth.

Ohio presented to the Sixty-fourth Congress a similar memorial (adopted on March 4, 1915), requesting the passage of the Palmer-Owen bill. Among the clauses of the preamble are the following (53 Cong. Rec., pt. 1, p. 1002):

> Whereas the reckless waste of future potentiality involved in the industrial exploitation of immature children is uneconomic and wrong and constitutes a crime against childhood and against the race itself; and
>
> Whereas the products of various industries of the State of Ohio, manufactured under humane conditions and without robbing child-

> hood of its birthright, are forced to seek to [sic] market in competition with the output of child-labor industries in various States in the Union; and * * *

The effect of low child labor standards in one State upon health in competing States is due entirely to the interstate character of the commerce in question. Because this is so a State can not protect itself. A State law forbidding entrance into the State of goods made by children of an age lower than that at which the State itself permits young persons to work would perhaps be valid in the absence of Congressional legislation. *Asbell* v. *Kansas*, 209 U. S. 251; *Reid* v. *Colorado*, 187 U. S. 137; but see *Leisy* v. *Hardin*, 135 U. S. 100; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1. But such a law would not be adequate, for the effects of the competition would be felt when goods from the competing States meet in other States or at the ports for foreign exportation (the present law as enacted, therefore, includes a prohibition against shipment in foreign as well as domestic commerce).

The conviction became gradually settled that the situation called for the exercise by Congress of its power to prescribe a uniform rule for the conduct of interstate commerce. Congress had thoroughly investigated the subject. An exhaustive investigation and report pursuant to resolutions in the Senate (41 Cong. Rec. 449), and in the House (41 Cong. Rec. 2139) on the industrial, social, moral, educational, and physical conditions of woman and child workers

in the United States was published in 19 volumes (S. Doc. No. 645, 61st Cong., 2d sess.). The legislature has studied no subject with greater care in all its phases than this.

Does the regulation of interstate commerce which resulted violate any provision of the Constitution? May Congress "promote the general welfare" by protecting, as it did, the health and industry of citizens of the Nation at large, both in producing and competing States, and by removing from the channels of interstate commerce through a uniform rule an obstruction to fair competition? These are the questions which now confront the court.

## III.

### The act does not contravene the Fifth Amendment.

The act having been adopted in view of the evils outlined, we come to consider what specific provisions of the Constitution, if any, it contravenes. Of those which are relied upon to oppose it, the Fifth Amendment is first in order if not in weight of argument.

#### 1. The due process clause in the Fifth Amendment limits Congress precisely as the same clause in the Fourteenth Amendment limits the State.

The words are the same, the purpose is the same, the effect is the same. No doubt exists on this point.

In the *Lottery Case* Mr. Justice Harlan said that Congress may prohibit the use of the facilities of

interstate commerce for the same purpose that a State may prohibit intrastate traffic (188 U. S. 321, 356, 357). In *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, Mr. Chief Justice White, after saying that the West Virginia Prohibition Law did not offend against the due process clause of the Fourteenth Amendment (p. 320), stated:

> (p. 332) It is only necessary to point out that the considerations which we have stated dispose of all contentions that the Webb-Kenyon Act is repugnant to the due process clause of the Fifth Amendment, since what we have said in the Fourteenth Amendment as applied to state power is decisive.

In *Twining* v. *New Jersey*, 211 U. S. 78, 100, 101, this court said:

> Of course, the part of the Constitution then before the court was the Fifth Amendment. If any different meaning of the same words, as they are used in the Fourteenth Amendment, can be conceived, none has yet appeared in judicial decision.

If therefore a State, notwithstanding the Fourteenth Amendment, may bar the facilities of intrastate commerce to goods made by children in factories, Congress may do likewise, so far as the Fifth Amendment is concerned, for interstate commerce. Prohibition of all intrastate commerce in child labor by a State clearly does not contravene the due process clause of the Fourteenth Amendment. *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 231 U. S. 320; *People* v. *Ewer*, 141

N. Y. 129; *State* v. *Shorey*, 48 Ore. 396; *Starnes* v. *Albion Mfg. Co.*, 147 N. Car. 556; *In re Weber*, 149 Calif. 392; *In re Spencer*, 149 Calif. 396; *Inland Steel Co.* v. *Yedinak*, 172 Ind. 423; *State* v. *Rose*, 125 La. 462. *A fortiori* are cases in this court upholding statutes limiting the hours of labor for men: *Bunting* v. *Oregon*, 243 U. S. 426; for women: *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Hawley* v. *Walker*, 232 U. S. 718; *Miller* v. *Wilson*, 236 U. S. 373; *Bosley* v. *McLaughlin*, 236 U. S. 385. See also as to night work: *People* v. *Charles Schweinler Press*, 214 N. Y. 395; as to one day rest in seven: *Hennington* v. *Georgia*, 163 U. S. 299; *Petit* v. *Minnesota*, 177 U. S. 164; *People* v. *Klinck Packing Co.*, 214 N. Y. 121.

It would seem that the demonstration is complete.

But the argument against the law based on the due process clause takes various forms. It is contended that the father has the right to his children's services and the employer has the right to buy them. As Mr. Justice McKenna said, however, in the *Hoke* case, 227 U. S. 308, 323:

> It is misleading to say that men and women have rights. Their rights can not fortify or sanction their wrongs.

There is no right to use the channels of interstate commerce to affect injuriously the health of the people in competing States; nor to consummate the injury to the producing child; nor in unfair competition.

There is no right to violate a valid law. And in passing, be it remembered that any exercise of legis-

lative authority must stand unless it be proved by one who seeks to escape its force that certain particular terms of the fundamental law are violated. The courts do not sit to review the wisdom or policy of legislative acts. It is not for the legislature to prove that its premises are unassailable. *Price* v. *Illinois*, 238 U. S. 446, 452; *Armour & Co.* v. *North Dakota*, 240 U. S. 510, 513.

**2. The law is a legitimate exercise of legislative power for the protection of the public health.**

It is now settled that regulations of interstate commerce may have the quality of police measures.

> Congress is not to be denied the exercise of its constitutional authority over interstate commerce, and its power to adopt not only means necessary but convenient to its exercise, because these means may have the quality of police regulations. (*Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510, 515.)
>
> Congress may establish police regulations as well as the States, confining their operations to the subjects over which it is given control by the Constitution. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 215.)

See also *Hoke* v. *United States*, 227 U. S. 308, 323; *Wilson* v. *United States*, 232 U. S. 563, 567; *Caminetti* v. *United States*, 242 U. S. 470, 492.

This is but to say in another form of words that the power to regulate commerce was entrusted to Congress, as were all other powers "for the good of

the nation" (*Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, 9), and may be freely used "to promote the general welfare, material and moral." *Hoke* v. *United States*, *supra*, p. 322.

(a) The act is reasonably calculated to protect the health of children in States competing with the point of origin.

A shipment of child-made goods in interstate commerce, as we have seen, directly affects the health of children in competing States. We may look at the actual facts of modern business, as Congress was entitled to do. Low child-labor standards in one State do not directly affect the standards in any other State. But the shipment of child-made goods outside of one State does directly induce similar employment of children in competing States. It is not enough to answer that each State theoretically may regulate conditions of manufacturing within its own borders. As Congress saw the situation, the States were not entirely free agents. For salutary statutes had been repealed, legislative action on their part had been defeated and postponed time and again, solely by reason of the argument (valid or not) that interstate competition could not be withstood. If interstate commerce is a practical conception, and if the actual facts of life are not to be disregarded, then the direct causal effect of the interstate transportation upon the health of citizens in the receiving State is manifest.

(b) The act protects the health of children in the producing State.

This is of course apparent. The question, be it noted, concerns the Fifth Amendment. The question here is not whether Congress has invaded the field of the States, or whether the regulation is one of interstate commerce. That is another matter. It seems clear that the Fifth Amendment imposes no obstacle to the denial by Congress of facilities of interstate transit for the prevention of injury to children and future voters in the shipping State. Congress can outlaw such goods to prevent pollution of the interstate stream.

(c) That the articles excluded are themselves innocuous is immaterial.

It is urged, however, that the products of child labor are innocuous of themselves, and that the legislature is incompetent to brand such legitimate articles of commerce as outlaws. An identical contention, it may be noted, was unsuccessfully pressed by distinguished counsel in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 132.

Discussion of the inherent badness of things is largely futile. How do we judge of goodness or badness except by their effect? Liquor (legitimate enough, see *Leisy* v. *Hardin*, 135 U. S. 100), lottery tickets, impure food, or misbranded articles are bad because in the ordinary course of human events they produce harm. Evil is as evil does. "By their fruits ye shall know them." In the words of Aristotle, "A thing is what it does." Those things which work ill effects *when transported* across State lines are for that reason evil. The transportation of

the products of child labor, therefore, can not be classed as innocuous in fact.

As a matter of law, the regulating power is not limited to goods harmful *per se*. Articles manufactured by combinations in restraint of trade may be enjoined from transit, although of the most wholesome nature. The commodities manufactured by railroads which are prohibited from transporting them on their own lines while still retaining an interest in them are innocuous enough in themselves. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366.

Game which is illegally killed in a State and is prohibited from being transported in interstate commerce may be quite wholesome food. Lacey Act of May 25, 1900, 31 Stat. 187, c. 553; Criminal Code, act March 4, 1909, 35 Stat. 1088, 1137, c. 321, sec. 242.

Food which is misbranded may be wholesome. Yet, because the shipment in interstate commerce of a perfectly good substitute for lemon oil would tend to accomplish a fraud practiced by a traveling salesman who made misrepresentations wholly within a State, prior to the beginning of the interstate movement, that movement may be prohibited. *Weeks* v. *United States*, No. 109, October Term, 1917, opinion February 4, 1918.

The girl whom the White Slave Act was designed to protect may harm no one on her journey in interstate commerce, yet, because that journey may be used to accomplish her ruin, it may be prohibited. *Wilson* v. *United States*, 232 U. S. 563; *Athanasaw* v. *United States*, 227 U. S. 326.

The truth is that there is nothing to the attempted objection. As was said by the present Chief Justice in *Compagnie Francaise* v. *Louisiana Board of Health*, 186 U. S. 380, where a Louisiana quarantine against healthy persons from other States was enforced to prevent their entrance into portions of the State infected with disease (p. 391):

> True is it that, in some of the cases relied on in the argument, it was held that a state law absolutely prohibiting the introduction, under all circumstances, of objects actually affected with disease, was valid because such objects were not legitimate commerce. But this implies no limitation on the power to regulate by health laws the subjects of legitimate commerce * * * .

In *Rast* v. *Van Deman*, 240 U. S. 342, upholding a prohibitive tax on trading stamps, this court said (p. 364), in answering the contention that the coupon system was—

> a method of advertising and lawful inducements to an increased custom and that in them there is no element of chance or anything detrimental to the public welfare.
>
> But there may be partial or total dispute of the propositions. And it can be urged that the reasoning upon which they are based regards the mere mechanism of the schemes alone and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities. As to all of which not courts but legislatures may be the

best judges and, it may be, the conclusive judges.

> This may be illustrated. A lottery of itself is not wrong, may be fairer, having less of overreaching in it, than many of the commercial transactions that the Constitution protects. * * * And at one time it was lawful. It came to be condemned by experience of its evil influence and effects. It is trite to say that practices harmless of themselves may, from circumstances, become the source of evil or may have evil tendency. *Murphy* v. *California*, 225 U. S. 623.

In dealing with the Sherley amendment to the Food and Drugs Act, *Seven Cases* v. *United States*, 239 U. S. 510. Mr. Justice Hughes said:

> (p. 516) * * * it is said that a distinction should be taken between articles that are illicit, immoral or harmful and those which are legitimate, and that the amendment goes beyond statements dealing with identity or ingredients. But the question remains as to what may be regarded as "illicit" * * * .

Liquor, lottery tickets, and misbranded food were legitimate objects until the legislature made them outlaws. Congress acted reasonably in putting child-made goods in the same class.

**8. A seller's liberty is not unduly restrained by protecting a purchaser from becoming an unwilling party to an immoral sale.**

It may be noted in passing that the defendant manufacturing company does not complain of any restriction upon its liberty. This complaint is urged

only by the plaintiff Roland Dagenhart and his minor sons.

If a seller's freedom may be restrained to protect purchasers who do not want to buy wholesome oleomargarine (*Plumley* v. *Massachusetts*, 155 U. S. 461), or those who do not want to pay for a drink which contains no coca and little cola (*United States* v. *Coca Cola Co.*, 241 U. S. 265, 285), there is no objection to protecting the vast number of people who regard the purchase of child-made products as an aid to immorality.

**4. There is no right to use the channels of interstate commerce for unfair competition.**

The power of Congress is not questioned. Large authority was exercised in removing unfair discrimination as a means of competition in the Act to Regulate Commerce of 1887, and the Clayton Anti-Trust and Federal Trade Commission Acts.

The matter is not of health. Industry and business are the controlling considerations. Sales detrimental to a State industry may be prohibited by a State, as Florida forbade the sale of unripe citrus fruit to be sent out of the State in order to protect the reputation of her products and thus build up the grape-fruit industry. *Sligh* v. *Kirkwood*, 237 U. S. 52. In interstate commerce discretion is intrusted to Congress to determine which of the various business elements of the Nation is entitled to protection. An example of a prohibition of interstate trade for industrial reasons is in the quarantine of cattle fit enough for food in themselves but likely to damage

the cattle industry in the receiving State. *M. K. & T. Ry.* v. *Haber*, 169 U. S. 613, 623.

It is clear that Congress believed that it was exercising in this case its power to forbid competition deemed unfair. The Senate Committee report on the bill which became the law has been quoted.

In an argument on the validity of the law in the House report (No. 46, 64th Cong., p. 40) appears the following:

> In other words, while the States can protect their manufacturers from the competition of the makers of adulterated foods, they are powerless to exclude the competition of foreign makers who cheapen their product by the exploitation of child labor. Should Congress lend its aid to the States which protect their child resources, it would therefore be helping them in a field in which they can not help themselves; whereas in the food and drugs act Congress enacted Federal legislation, not because it was the only protection open to the States, but because it was doubtless the best protection possible.
>
> It would indeed be a serious indictment against the wisdom of the framers of our Constitution to say that they took away from the States the right to protect their own manufacturers from unfair trade practices carried on by competitors in other States and yet failed to give Congress the power thus taken from the States. For it is unfair competition for a manufacturer to exploit child labor to lessen the cost of production

> when his competitor in another State is either forbidden by law or unwilling to stoop to such practices. Fortunately, the framers of the Constitution did not so limit the power of Congress. They have conferred on Congress all the power over interstate and foreign commerce taken from the States. What better exercise of the right of regulation thus conferred could there be than the protection of those engaged in industry from unfair competition?

It was not fanciful to class shipment of child-made goods as unfair competition. Fraud and deceit are recognized acts of unfairness. An advantage derived by drawing on the blood of children is also immoral, according to the concensus of modern thought, and may be put in the same class. The advantage gained is in effect a rebate paid out of the lives of the generation on which the Nation in coming years must rely. Nor is immorality alone the test of unfair competition. An act unreasonably interfering with another's right to pursue trade, such as local price cutting, or hiring away of workmen, constitutes unfairness. Congress may well have thought that child labor deserved a like reprobation.

There is no contention here that Congress may without other reason than a desire for uniformity reduce economic conditions among the several States to one dead level. The mere fact that one State may from causes, whether natural or artificial, be better equipped than its neighbors for profitable

commerce is no warrant for Congressional action. Nor is there any analogy in supposititious cases sometimes put of prohibitions upon the interstate shipment of products resulting from coolie labor, or non-union labor. Back of the present law stands the general conviction, clearly evidenced, that child labor is in and of itself immoral in character and injurious to the general welfare; that as such it may be properly abolished by the States within their several borders and by Congress in the channels of interstate trade; that the States are deterred from dealing with the matter as they wish for want of harmonious action among them; and that its use by competitors is unjust and unfair. No hypothetical case can be fairly put here as analogous which does not deal with an evil of this recognized character.

**5. The extension of the prohibition to all products of the factory in which the child labors is a reasonable provision for the due enforcement of the act.**

The provision is a reasonable means, within the range of legislative discretion, for enforcing the prime purpose to "prevent interstate commerce in the products of child labor." Problems of enforcement have always loomed large in child labor legislation. S. Doc. 645, 61st Cong., pp. 170–189.

As the bill was recommended by the House Committee (H. Rept. No. 46, 64th Cong., 1st sess.), and as it passed the House, it provided:

> That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate

> commerce the product of any mine or quarry situated in the United States which has been produced, in whole or in part, by the labor of children under the age of sixteen years, [etc.]
>
> SEC. 2. Proof of the employment within sixty days prior to the shipment of such product therefrom (first) in a mine or quarry of a child under the age of sixteen years * * * shall be prima facie evidence that such produce has been produced in whole or in part by the labor of such a child.

The *prima facie* clause was obviously designed to meet evidential difficulties. How could the District Attorney ascertain that the child who labored all night on a carding machine had contributed any certain fraction of a lot of cotton goods shipped from the factory? The Senate felt this difficulty, and amended the act to its present form. In explanation of the amendment the Senate Committee said (S. Rept. No. 358, 64th Cong., 1st sess., to accompany H. R. 8234, pp. 4, 5):

> The difficulties in the way of such proof seem almost insuperable without a force of inspectors so large as to make the expenses of administration prohibitive. The inspector would have to trace the particular article on which the child had worked through all the processes of manufacture, packing, labeling, and shipping to the freight office. Or if it is not shipped in interstate commerce directly by the manufacturer, then he must follow it to the warehouse

of the jobber and through his hands to a shipment in interstate commerce, even though the the goods may remain in the warehouse for a long time and when they are finally shipped it may be almost impossible for the inspector to identify them as the same goods which he had traced into the warehouse. The only alternative to this system would be to compel the manufacturer to keep detailed records of the exact time of the manufacture of all goods made by him, of the persons who performed labor upon them, and the time when and the persons to whom they were shipped. It is necessary only to state this alternative to show its undesirability.

To obviate these manifest difficulties section 2 of the House bill seeks to establish a rule of evidence that proof of employment of forbidden child labor within a mine or factory within 60 days prior to the shipment of the products shall be prima facie evidence that child labor was used in the manufacture of such product. Such a presumption is of little value. Under the bill as it passed the House, conviction would depend on proof that the particular goods sought to be shipped were the product of proscribed child labor. While the presumption would operate to establish a prima facie case this presumption would be easily rebutted, and in cases where the goods were retained in the mine or factory for a long period prior to shipment it would become a practicable impossibility for the Government to maintain its case.

The 30-day provision is designed to accomplish the same end. It has been urged that the clause provides a means of evasion by holding the goods 31 days. This may be reason for a new law. But Congress felt some time limit had to be set. The ordinary manufacturer would not and could not dismiss his younger employees, hold the goods for more than 30 days, and then reemploy the children. In order to prohibit the interstate movement of child-made products it is not going too far to prohibit also the interstate movement of all products which within the ordinary period of manufacture may have come in part from child labor.

Congress may do effectively what it has power to do at all. Because the transportation by railroads of products owned by them may result in certain instances in discrimination, Congress is entitled absolutely to prohibit transportation of all products, no matter how harmless in character, manufactured and owned by the carrier. *Delaware, Lack. & Western R. R. Co.* v. *United States*, 231 U. S. 363.

As said in *St. John* v. *New York*, 201 U. S. 633, 637:

> Not only the final purpose of the law must be considered, but the means of its administration—the ways it may be defeated. Legislation to be practical and efficient must regard this special purpose as well as the ultimate purpose.

In *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201, a State statute prohibiting the sale of malt liquors was upheld, though the sale of nonintoxicating liquor was included. The court said (p. 201):

> It is also well established that, when a State exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government. *Booth* v. *Illinois*, 184 U. S. 425; *Otis* v. *Parker*, 187 U. S. 606; *Ah Sin* v. *Wittman*, 198 U. S. 500, 504; *New York ex rel. Silz* v. *Hesterberg*, 211 U. S. 31; *Murphy* v. *California*, 225 U. S. 623. With the wisdom of the exercise of that judgment the court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it can not be said that the limit of legislative power has been transcended.

Again, in *Crane* v. *Campbell*, 245 U. S. 304, 307, in discussing the power of the State to prohibit the possession of whisky solely for personal use it was said:

> As the State has the power above indicated to prohibit, it may adopt such measures as are reasonably appropriate or needful to render exercise of that power effective. *Booth* v.

*Illinois*, 184 U. S. 425; *Silz* v. *Hesterberg*, 211 U. S. 31; *Murphy* v. *California*, 225 U. S. 623; and *Rast* v. *Van Deman & Lewis*, 240 U. S. 342, 364. And, considering the notorious difficulties always attendant upon efforts to suppress traffic in liquors, we are unable to say that the challenged inhibition of their possession was arbitrary and unreasonable or without proper relation to the legitimate legislative purpose.

In *Kidd* v. *Pearson*, 128 U. S. 1, the State was held entitled to prohibit the manufacture of liquor within its borders, even though all of it was designed for consumption outside the State. To prevent frauds upon creditors, all sales of stock in bulk may be forbidden. *Lemieux* v. *Young*, 211 U. S. 489. To cut off the abuses of some passes all may be forbidden. *L. & N. R. R. Co.* v. *Mottley*, 219 U. S. 467. To prevent illegal killing of domestic game out of season possession out of season of foreign game regardless of intent may be proscribed, although it was insisted (p. 40) that foreign game could be distinguished by inspection. *New York ex rel. Silz* v. *Hesterberg*, 211 U. S. 31. In *Booth* v. *Illinois*, 184 U. S. 425, an Illinois statute was upheld which prohibited all contracts, whether *bona fide* or gambling, for an option to sell or buy grain or other commodities at a future time.

In *Otis* v. *Parker*, 187 U. S. 606, the provision of the California constitution prohibiting "all contracts for the sales of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day * * *" was held not to

infringe the Fourteenth Amendment. The provision was applied broadly, and not confined to gambling contracts. Mr. Justice Holmes, delivering the opinion of the court, said (p. 609):

> If the State thinks that an admitted evil can not be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts can not interfere, unless, in looking at the substance of the matter, they can see that it "is a clear, unmistakable infringement of rights secured by the fundamental law." *Booth* v. *Illinois*, 184 U. S. 425, 429.

Thus, the fact "that purchases on margin may be and frequently are used as a means of gambling * * *" was held to justify an absolute prohibition on all sales of stock on margin.

*Marvin* v. *Trout*, 199 U. S. 212, affords another illustration of the wide discretion exercisable by State legislatures as to the means which may be adopted for enforcing proper police purposes. In that case an Ohio statute was enforced which provided a lien against a building the owner of which permitted it knowingly to be used for gaming purposes. A case of the same character is *Eiger* v. *Garrity*, No. 143, October Term, 1917, opinion March 4, 1918, in which the plaintiff Delia Garrity subjected premises used for the sale of liquor to the payment of a judgment obtained against the liquor dealer for damages from injury sustained to her means of support through sales of intoxicating liquors to her husband. The

judgment against the tenant was by default, and the statute made no provision for notice of the suit to the landlord whose property was ultimately taken.

Some billboards offer opportunities for evils to arise. In its discretion, the legislature may therefore forbid not only those definitely evil but all billboards. Yet the billboard advertising business is not an inherently unlawful method of making money. *Cusack Co.* v. *Chicago*, 242 U. S. 526.

In *Lawton* v. *Steele*, 152 U. S. 133, the summary destruction, without hearing, of fish nets by the game warden was held valid as a proper means of enforcing the purpose of a New York statute to protect domestic fish.

In *Patsone* v. *Pennsylvania*, 232 U. S. 138, a conviction was sustained under a statute making unlawful the possession of a shotgun or rifle by a foreign-born person. This statutory provision was regarded as a means adopted for making effective (p. 143) the purpose of the statute to prevent the killing of wild birds or animals except in defense of person or property. Obviously, shotguns and rifles may be possessed by foreigners for many lawful purposes.

So also, as a means of enforcement, employers of child labor may be required at their peril to ascertain whether those whom they employ are in fact under the age specified. *Sturges* v. *Beauchamp*, 231 U. S. 320.

It is unnecessary to multiply examples of those cases where incidental hardships must be suffered by

innocent individuals in order that the State may effectively exercise an admitted power. As Sir Frederick Pollock has put it, there are times when "John Doe must suffer for the Commonwealth's sake." All law is more or less a compromise. The legislature must do the best it can with the legal machinery and general rules. It knows that inspectors and court processes are not omniscient. In the case at bar effective yet not unreasonable means were adopted to exclude the prohibited articles from interstate transportation.

## IV.

**Assuming that the act does not contravene the Fifth Amendment, there is no other clause of the Constitution to which it is obnoxious.**

As Mr. Justice Harlan said in the *Lottery Case*, 188 U. S. 321, 356:

> * * * it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? * * * We can not think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from State to State except the one providing that no person shall be deprived of his liberty without due process of law.
>
> (p. 357) If it be said that the act of 1895 is inconsistent with the Tenth Amendment, reserving to the States respectively or to the

people the powers not delegated to the United States, the answer is that the power to regulate commerce among the States has been expressly delegated to Congress.

**1. The Ninth and Tenth Amendments to the Constitution are not violated.**

To urge the reserved powers of the States is to beg the question. The reserved powers of the States do not begin until the power of Congress leaves off. The Constitution and the laws passed in pursuance thereof are the supreme law of the land.

That Congress has no power to prohibit the use of child labor in any factory in any State may be freely admitted. But this fact is of itself no obstacle to the exclusion of such products from interstate commerce in exercise of the conceded power to regulate commerce among the several States. This doctrine has been repeatedly exemplified in statutes and decisions.

The policy of Pennsylvania for generations encouraged combination of the railroad with the coal mining business. Congress, of course, can not regulate coal mining as such. Yet the commodities clause had the effect largely of divorcing two great industries of the State. *United States* v. *Del., Lack. & Western R. R. Co.*, 238 U. S. 516; *United States* v. *Del. & Hudson Co.*, 213 U. S. 366.

Congress is not to be denied the power to declare a bridge an unreasonable obstruction to interstate navigation because a State law has authorized its construction. *Union Bridge Co* v. *United States*, 204

U. S. 364, 401; nor the power to prohibit payment for interstate journeys by advertising because such payment is expressly permitted by State law. *Chicago, etc., Ry. Co.* v. *United States*, 219 U. S. 486.

A State may wish to foster a complete monopoly of manufacturing within its borders, yet Congress may affect the situation so far as to deny the use of interstate commerce facilities for that purpose. *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Northern Securities Co.* v. *United States*, 193 U. S. 197. A conspiracy to obstruct interstate transportation of hats manufactured in a hat factory located in one State may be reached although acts in pursuance of the conspiracy are performed within a State, some of them "in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority." *Loewe* v. *Lawlor*, 208 U. S. 274, 301.

The argument that the State's control over manufacturing prevented Congress from exercising its control over interstate commerce was made in the *Standard Oil* and *Tobacco Cases*. In the former case Mr. Chief Justice White referred to the contention as follows (221 U. S. 1, 68, 69):

> So far as the objections of the defendants are concerned they are all embraced under two headings:—
>
> *a*. That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subjects *dehors* the reach of its authority to regulate commerce, by

enabling that body to deal with mere questions of production of commodities within the States. But all the structure upon which this argument proceeds is based upon the decision in *United States* v. *E. C. Knight Co.*, 156 U. S. 1. The view, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice. *United States* v. *Northern Securities Co.*, 193 U. S. 197, 334; *Loewe* v. *Lawlor*, 208 U. S. 274; *Swift & Co.* v. *United States*, 196 U. S. 375; *Montague* v. *Lowry*, 193 U. S. 38; *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423.

In the *Tobacco Case* Mr. Johnson presented the same argument (221 U. S. 124, 125), based on the *Knight Case*. The answer of this court, made in the *Standard Oil Case*, was said not to require restatement (221 U. S. 184).

It is settled that in so far as regulation of essentially local matters is necessary for the proper conduct of interstate commerce Congress has jurisdiction. Intrastate railroad rates as such can not be fixed by Federal authority. *Minnesota Rate Cases*, 230 U. S. 352. Yet, when they are so substantially connected with interstate commerce that effective regulation of the latter requires assumption of jurisdiction over the former, the power exists. *Houston & Texas Ry.* v.

*United States*, 234 U. S. 342; *Adams Express Co.* v. *Caldwell*, 244 U. S. 617; *Illinois Central R. R. Co.* v. *Public Utilities Commission of Illinois*, No. 416, October Term, 1917, decided January 14, 1918. Similarly, safety appliances may be prescribed for all cars used on an interstate railway, even though the particular car in question is engaged solely in intrastate commerce. *Southern Ry. Co.* v. *United States*, 222 U. S. 20, 26, 27. So, in *Balto. & Ohio R. R. Co.* v. *Interstate Com. Comm.*, 221 U. S. 612, 619, it was held that the Hours of Service Act of March 4, 1907, 34 Stat. 1415, c. 2939, was not to be denied effect because of "the commingling of duties relating to interstate and intrastate operations."

Congress can not regulate the meat-packing industry as such, yet the Meat-Inspection Act of June 30, 1906, 34 Stat. 669, 674, c. 3913, enforced in *United States* v. *Lewis*, 235 U. S. 282, has had no little effect upon the industry. Congress similarly can not directly legislate against diseased cattle, yet the Cattle Quarantine Act of March 3, 1905, 33 Stat. 1264, c. 1496, as amended by act of March 4, 1913, 37 Stat. 828, 831, c. 145, enforced in *United States* v. *Nixon*, 235 U. S. 231, has no doubt caused considerable financial loss to cattle raisers in the States.

Congress has no power to suppress lotteries within the States, but it may prohibit the transportation of lottery tickets from one State to another. *Champion* v. *Ames*, 188 U. S. 321. It has no general power over the crime of larceny within the States, but the validity of the act of February 13, 1913, penalising

the larceny of goods in interstate commerce can not be doubted. 37 Stat. 670, c. 50; *Morris* v. *United States*, 229 Fed. 516; *Freedman* v. *United States*, 233 Fed. 429 (certiorari denied, 244 U. S. 657; writ of error dismissed, *id.* 643.)

Nothing is more essentially a local matter than prostitution. The crime has a distinct situs, regardless of the origin of the persons who perform it. The contention that the White Slave Act of 1910 encroached upon the reserved powers of the States has been often pressed upon the court and as frequently denied. See *Caminetti* v. *United States*, 242 U. S. 470, 473, 480. In *Hoke* v. *United States*, 227 U. S. 308, 320, 322, Mr. Justice McKenna said:

> The power of Congress under the commerce clause of the Constitution is the ultimate determining question. If the statute be a valid exercise of that power, how it may affect persons or States is not material to be considered. (p. 322) It may be that Congress could not prohibit the manufacture of the article in a State. It may be that Congress could not prohibit in all of its conditions its sale within a State. But Congress may prohibit its transportation between the States, and by that means defeat the motive and evils of its manufacture.

It is submitted that the opinion in the *Hoke* case disposes of all arguments against the law now in question.

The doctrine of the *Hoke* case has been consistently followed by this court. Misbranding and fraud are

essentially local matters. The misrepresentation by a traveling salesman in *Weeks* v. *United States*, No. 109, October Term, 1917, opinion February 4, 1918, to the effect that an imitation was "a special lemon" extract, occurred at a precise spot within a State. The Pure Food law substantially affected the manufacture of coca-cola within a State. *United States* v. *Coca Cola Co.*, 241 U. S. 265. But, as was said in *Seven Cases* v. *United States*, 239 U. S. 510, 514:

> So far as it is objected that this measure, though relating to articles transported in interstate commerce, is an encroachment upon the reserved powers of the States, the objection is not to be distinguished in substance from that which was overruled in sustaining the White Slave Act.

**2. The argument that only the "consumer" can be protected is without merit.**

Antagonists of the doctrine that the power of Congress over interstate commerce is plenary have ever been ready with distinctions. Once it was argued that commerce must include a trading transaction and did not embrace navigation. It has been said that the power does not embrace a prohibition, but goes no further than regulations directed to the freedom or security of commerce. It has been urged that the protection of persons or property during actual movement was the limit. At one time it was urged that regulations could never assume the form of police measures. Driven from all these positions by the Lottery, White Slave, Pure Food and other cases,

opponents of this legislation now assert that in all instances the consumer at the end of the interstate journey is the object of concern. Of course the word "consumer" is not used in this connection in a strict or technical sense. See Cattle Quarantine and White Slave cases. It indicates merely the public in the receiving State at the end of the interstate journey.

One may marvel at the ingenuity of the distinctions suggested. As Mr. Justice McKenna said in the *Hoke* case, 227 U. S. 320:

> Congress is given power "to regulate commerce with foreign nations and among the several States." The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And, besides, it has had so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an admitted example in some one of them. Experience, however, is the other way, and in almost every instance of the exercise of the power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example.

The distinction between the public in the receiving State and in the shipping State is wholly without merit in principle. The Constitution grants to Congress no more power over the former than the latter. Neither is mentioned. No sound reason can be asserted for making the former an especial favorite of national power.

There is nothing in the cases in any way lending support to the suggested distinction. On the contrary it is the public, wherever situated, that is entitled to protection.

Moreover, certain cases have had definitely in mind the protection of the citizens in the shipping State. The commodities clause was primarily for the protection of the shipper. It compelled action by persons in the shipping State, the dissociation of railroad and coal business, prior to transportation of articles or commodities owned by them (213 U. S. 366, 412), all to the protection of the competing shipper. The purpose of the statute was expressed in *Del., Lack. & Western R. R. Co.* v. *United States*, 231 U. S. 363, 370:

> If such carrier hauls for the public and also for its own private purposes, there is an opportunity to discriminate in favor of itself against other shippers * * * .

The Lacey Act protects the game belonging to the shipping State. (Sustained in *Rupert* v. *United States*, 181 Fed. 87.) The White Slave Act was designed to protect the innocent country girl from being enticed to the city. Accomplishment of immorality at the end of the journey thus is immaterial. *Athanasaw* v. *United States*, 227 U. S. 326; *Wilson* v. *United States*, 232 U. S. 563.

The truth is that in most cases it is impossible in point of fact to separate the consuming from the producing public. The interstate journey can not be confined in its effect to the people in the receiving State. Action and reaction pursue each other in

the course of human affairs regardless of State lines. The journey covered by the White Slave Act involves the nefarious scheme at one end and its consummation at the other. The Webb-Kenyon Law tends to discourage the nuisance of the manufacture of spirits before transportation, as well as of its sale thereafter. The Lottery Act tended to wipe out the manufacture of the gambling device before any transportation began. Congress may regulate the interstate journey in the interest of the public at large (subject of course to the Fifth Amendment) regardless of the accident of the residence of citizens. It seems impossible to say that a rule for the movement of goods from one State to another is not a regulation of commerce because designed to protect people at one end of the journey rather than those at the other.

While, therefore, it is sufficient, both on principle and on authority, to regard solely that portion of the public resident in the shipping State, yet in the case at bar it is not important to deny the validity of the suggested distinction between the consumer and the producer. For, as we have seen, the argument that the evil is complete prior to the interstate movement is fallacious. Congress regulated the interstate commerce movement of child-made goods in order to protect citizens outside of the shipping State. This vital element, not to be overlooked, brings the present case within the conceded and narrowest definition of the powers of Congress.

**8. Congress was attempting to regulate commerce in good faith and not to do indirectly what it could not do directly.**

Permeating much of the argument against the law is the innuendo that Congress was not acting in entire good faith. When attempt is made to put the complaint in legal phraseology it is said that the regulation must fail unless it is legitimate, and that in the child labor law the purpose of Congress was to step outside its legitimate sphere and invade the field of police power reserved to the States.

The argument is not a new one in this court. *Lottery Case, supra; Hoke* v. *United States, supra; Caminetti* v. *United States, supra.* Of course, it is not meant to assert that the members of the legislature were influenced by ulterior motives, for it is well-settled that the judiciary can not investigate the motives of the legislature (*McCray* v. *United States*, 195 U. S. 27, 56, 59; *Veazie Bank* v. *Fenno*, 8 Wall. 533; *Ex parte McCardle*, 7 Wall. 506, 514; *Doyle* v. *Continental Insurance Co.*, 94 U. S. 535, 541; *Calder* v. *Michigan*, 218 U. S. 591, 598; *Weber* v. *Freed*, 239 U. S. 325, 330); even when bribery and corruption are alleged (*Fletcher* v. *Peck*, 6 Cranch 87, 130, 131). That there existed on the part of many members of the public at large a hope that child labor in the "non-standard" States would be largely lessened is no more material than similar hopes on other matters with reference to the White Slave Act and the Pure Food and Drugs Act. The great gain anticipated to the child and the Nation no doubt

touched the springs of human sympathy and was reflected in the hearings before Congress and in the debates. This does not alter the precise purpose sought to be attained or the precise terminology of the enactment as passed. In passing upon constitutionality the court is confined to the purpose as expressed in the act. The principle of the *McCray* case, *supra*, applies here. There a statute was held valid as a tax on oleomargarine, as its terms directly stated, though destruction of the oleomargarine business may have been in contemplation. As every presumption favors validity, the court need not speculate on motives. If any legitimate legislative purpose is discoverable on inspection of the act it must be sustained.

Congress did not seek to do indirectly what it could not do directly. It sought only to prevent the evil resulting from the interstate transportation of child-made goods. We repeat that the manufacturer in any State may employ whom he pleases, and so long as he keeps his products within the State he does not encounter the act. The law denies the facilities of transit because of the evils flowing therefrom, namely, the encouragement of practices deemed immoral in the initial state, and the perpetuation of harm in the terminal and other states. Further than this it does not go. Congress directly forbade the use of the interstate stream for an immoral use, and neither directly nor indirectly forbade anything else.

**4. Suggestions of political inexpediency are irrelevant.**

The rule that the judiciary has no concern with questions of the wisdom, expediency, or oppressive character of legislation is axiomatic. This court throughout its history has been as careful not to transgress the prerogatives of Congress as it has been vigilant to preserve in all their integrity its own. Of the argument which would induce the court to go beyond this rule the present Chief Justice said in the *McCray* case, *supra*, p. 54:

> The proposition, if sustained, would destroy all distinction between the powers of the respective departments of the Government, would put an end to that confidence and respect for each other which it was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions.
>
> * * * * *
>
> It is, of course, true, as suggested, that if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the Government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The remedy for this, however, lies not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.

How consistently this rule has been adhered to appears from the fact that no act of Congress purporting to be a regulation of commerce has so far been declared unconstitutional where the subject-matter of the act had real relation to commerce itself and where the terms of the act did not extend its operation beyond interstate trade. In *Adair* v. *United States*, 208 U. S. 161, the statute was declared void upon the ground that the subject regulated had no real relation to interstate commerce. In *United States* v. *Dewitt*, 9 Wall. 41, and the *Trade-Mark Cases*, 100 U. S. 82, it appeared that the acts purported to regulate, not interstate commerce but commerce in general; while in the first *Employers' Liability Cases*, 207 U. S. 463, the act was so framed as to include within its scope interstate commerce and intrastate commerce as well.

In the case at bar the act purports to regulate commerce by prescribing a uniform rule of transportation. Its terms are rigidly limited to interstate commerce. It goes no further than is fairly necessary in that respect. It can not be said to interfere without reason with private liberty. It is not believed to differ in any matter of principle from those statutes which have been heretofore considered and upheld.

CONCLUSION.

The judgment below should be reversed and the case remanded with instructions to dismiss the bill.

JOHN W. DAVIS,
*Solicitor General.*
W. L. FRIERSON,
*Assistant Attorney General.*
ROBERT SZOLD,
*Attorney.*

MARCH, 1918.

# APPENDIX "A."

## FEDERAL CHILD LABOR ACT.

[September 1, 1916, 39 Stat. 675, c. 432.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution.

SEC. 2. That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board to make and publish from time to time uniform rules and regulations for carrying out the provisions of this act.

SEC. 3. That for the purpose of securing proper enforcement of this act the Secretary of Labor, or any person duly authorized by him, shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops,

factories, manufacturing establishments, and other places in which goods are produced or held for interstate commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this act as may from time to time be authorized by appropriation or other law.

SEC. 4. That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this act, or to whom any State factory or mining or quarry inspector, commissioner of labor, State medical inspector, or school-attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided: *Provided*, That nothing in this act shall be construed to apply to bona fide boys' and girls' canning clubs recognized by the Agricultural Department of the several States and of the United States.

SEC. 5. That any person who violates any of the provisions of section one of this act, or who refuses or obstructs entry or inspection authorized by section three of this act, shall for each offense prior to the first conviction of such person under the provisions of this act, be punished by a fine of not more than $200, and shall for each offense subsequent to such conviction be punished by a fine of not more than $1,000, nor less than $100, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this act for a shipment, delivery for shipment, or transportation who establishes a guaranty issued by the person by whom the goods shipped or delivered for shipment or transportation were manufactured or produced, resident in the United States, to the effect that such goods were produced or manufactured in a mine or quarry in which within thirty days prior to their removal therefrom no children under the age of sixteen years were employed or permitted to work, or in a mill, cannery, workshop, factory, or manufacturing establishment, in which within thirty days prior to the removal of such goods therefrom no children under the age of fourteen years were employed or permitted to work, nor

children between the ages of fourteen years and sixteen years employed or permitted to work more than eight hours in any day or more than six days in any week or after the hour of seven o'clock postmeridian or before the hour of six o'clock antemeridian; and in such event, if the guaranty contains any false statement of a material fact, the guarantor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violation of the provisions of this act. Said guaranty, to afford the protection above provided, shall contain the name and address of the person giving the same: *And provided further*, That no producer, manufacturer, or dealer shall be prosecuted under this act for the shipment, delivery for shipment, or transportation of a product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, if the only employment therein, within thirty days prior to the removal of such product therefrom, of a child under the age of sixteen years has been that of a child as to whom the producer or manufacturer has in good faith procured, at the time of employing such child, and has since in good faith relied upon and kept on file a certificate, issued in such form, under such conditions, and by such persons as may be prescribed by the board, showing the child to be of such an age that the shipment, delivery for shipment, or transportation was not prohibited by this act. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violations of this act. In any State designated by the board, an employment certificate or other similar paper as to the age of the child, issued under the laws of that State and not inconsistent with the provisions of this act, shall have the same force and effect as a certificate herein provided for.

SEC. 6. That the word "person" as used in this act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term "ship or deliver for shipment in interstate or foreign commerce" as used in this act means to transport or to ship or deliver for shipment from any State or Territory or the District of Columbia to or through

any other State or Territory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the State, Territory, or district of manufacture or production.

SEC. 7. That this act shall take effect from and after one year from the date of its passage.

Approved, September 1, 1916.

## APPENDIX "B."

## STATE PROHIBITIONS OF CHILD LABOR.

### 1. STATUTES FORBIDDING THE EMPLOYMENT OF CHILDREN UNDER SIXTEEN YEARS OF AGE IN MINES AND QUARRIES.

Alabama, act of February 24, 1915, sec. 6, No. 169, Acts of Alabama, 1915, p. 193.

Arizona, R. S. 1913, Civil Code, sec. 3113, p. 1042.

Arkansas, Initiative Act No. 1, sec. 4, Acts of 1915, p. 1507.

California, sec. 5, act of June 5, 1915, c. 625, Statutes of California, 1915, p. 1203.

Connecticut, act of May 5, 1915, c. 195, Public Acts of Connecticut, 1915, p. 2020.

Illinois, act of June 26, 1917, sec. 10, Acts of 1917, pp. 511, 517.

Kansas, act of March 10, 1917, c. 227, sec. 2, Laws of Kansas, 1917, p. 318.

Kentucky, Carroll's Statutes, 1915, sec. 331a9, p. 323.

Maryland, act of April 11, 1916, c. 222, sec. 1, Laws, 1916, pp. 435, 437.

Nevada, act of March 25, 1913, c. 232, sec. 2, Statutes of 1913, p. 354.

New York, Birdseyes' Consol. Laws 1909, v. 3, Labor, c. 36, art. 9, sec. 131, p. 3062.

Ohio, act of May 9, 1913, General Code, sec. 13002, pp. 909, 912.

Oklahoma, R. L. 1910, sec. 3739.

Tennessee, act of July 4, 1911, sec. 3, c. 57, Laws 1911, p. 108.

Texas, act of March 6, 1917, c. 59, sec. 2, Laws of 1917, p. 104 (17 yrs.).

Utah, act of March 12, 1917, c. 80, sec. 1, Laws, 1917, p. 242.

Vermont, act of April 12, 1917, c. 177, sec. 3, Laws of 1917, p. 203.

Wisconsin, Statutes 1913, c. 83, sec. 1728a.2 (18 yrs.).

SIXTEEN YEAR LIMIT IN MINES BUT NOT IN QUARRIES.

Colorado, Mills' Anno. Stats. 1912, sec. 659, p. 304.
Montana, Rev. Code 1907, secs. 1746, 1752, pp. 500, 502.
Pennsylvania, act of May 13, 1915, c. 177, sec. 5, Laws of 1915, p. 288.
Washington, Pierce's Code, 1912, ti. 345, sec. 143, p. 1464.

2. STATUTES FORBIDDING THE EMPLOYMENT OF CHILDREN UNDER FOURTEEN YEARS OF AGE IN MILLS, WORKSHOPS, AND OTHER MANUFACTURING ESTABLISHMENTS.

Alabama, act of February 24, 1915, No. 169, sec. 1, Acts of 1915, p. 193.
Arkansas, Initiative Act No. 1, sec. 1, Acts of 1915, p. 1505.
Connecticut, act of June 28, 1911, c. 119, sec. 1, Public acts, 1911, p. 1373.
Florida, Comp. Laws, 1914, sec. 2642c, p. 1385.
Illinois, act of June 26, 1917, sec. 1, Laws of 1917, p. 511.
Iowa, Code of Iowa, Supp. 1915, sec. 2477–a, p. 206.
Kansas, act of March 10, 1917, c. 227, sec. 1, Laws of 1917, p. 318.
Kentucky, Statutes 1915, sec. 331a1, p. 320.
Louisiana, act July 8, 1914, No. 133, sec. 2, Laws 1914, p. 148.
Massachusetts, act of June 19, 1913, sec. 1, c. 831, Acts and Resolves, 1913, p. 930.
Michigan, act of May 17, 1915, sec. 1, No. 255, Acts 1915, p. 450; act of May 10, 1917, No. 280, Acts 1917, p. 709.
Minnesota, Gen. Statutes, 1913, sec. 3839, p. 875.
Missouri, R. S. 1909, v. 1, sec. 1715, p. 600 as amended by act of April 7, 1911, Laws of 1911, p. 132.
Montana, R. C. 1907, sec. 1746 (16 yrs.), p. 500.
Nebraska, R. S., 1913, sec. 3575, p. 1019.
New Hampshire, act of May 21, 1913, c. 224, sec. 1, Acts of 1913, p. 786.
New Jersey, act of April 17, 1914, c. 252, sec. 1, Laws 1914, p. 523.

New York, act of May 15, 1913, c. 529, Laws 1913, p. 1400.

North Dakota, Comp. Laws 1913, sec. 1404, p. 337.

Ohio, Gen. Code, sec. 12993, act of May 9, 1913, Acts of 1913, p. 907.

Oklahoma, R. L., 1910, sec. 3728.

Pennsylvania, act of May 13, 1915, c. 177, sec. 2, Pub. Laws 1915, p. 287.

Rhode Island, act of April 23, 1915, c. 1253, sec. 1, Acts of 1915, p. 179.

South Carolina, act Feb. 29, 1916, No. 361, Acts 1916, p. 655.

Tennessee, act of July 4, 1911, c. 57, sec. 1, Laws of 1911, p. 108, as amended by act April 7, 1917, c. 77, Laws 1917, p. 233.

Vermont, act of April 12, 1917, c. 177, sec. 2, Acts of 1917, p. 203.

Wisconsin, Statutes, 1913, c. 83, sec. 1728a.3, p. 1237.

3. STATUTES FORBIDDING THE EMPLOYMENT OF CHILDREN UNDER SIXTEEN YEARS OF AGE IN MILLS, WORKSHOPS, AND OTHER MANUFACTURING ESTABLISHMENTS MORE THAN 8 HOURS IN ANY DAY.

Arizona, Rev. St. 1913, sec. 3131, p. 1046.

Arkansas, initiative act No. 1, 1914, sec. 5, Acts 1915, p. 1507.

California, act of June 5, 1915, c. 625, sec. 7, Statutes of 1915, p. 1204; act of May 22, 1917, c. 580, Statutes 1917, p. 826.

Illinois, act of June 26, 1917, sec. 9, Laws 1917, p. 516.

Iowa Code, S. Supp. 1915, sec. 2477–c., p. 207.

Kansas, act of March 10, 1917, c. 227, sec. 3, Laws 1917, p. 318.

Kentucky, Carroll's Statutes 1915, sec. 331a 7, p. 323.

Massachusetts, act of June 19, 1913, c. 831, sec. 8, Acts & Resolves 1913, p. 932.

Minnesota, Gen. Statutes, 1913, sec. 3845, p. 877.

Missouri, R. S. 1909, v. 1, sec. 1716, p. 600, as amended by act of April 7, 1911, Laws 1911, p. 133.

Nebraska, R. S. 1913, sec. 3584, p. 1023.

Nevada, act of March 25, 1913, c. 232, sec. 8, Laws 1913 p. 355.

New Jersey, act of April 17, 1914, c. 252, sec. 6, Laws 1914, p. 528; act of March 21, 1916, c. 242, Laws 1916, p. 506.

New York, Act of April 19, 1912, c. 539, sec. 1, Laws 1912, p. 1103.

North Dakota, Comp. Laws 1913, sec. 1410, p. 339.

Ohio, Gen. Code, sec. 12996, Act of May 9, 1913, Acts 1913, pp. 864, 908.

Oklahoma, R. L. 1910, sec. 3732.

Tennessee, act April 7, 1917, c. 77, sec. 2, Public Acts 1917, p. 233.

Vermont, act of April 12, 1917, No. 177, sec. 1, Laws 1917, p. 202.

Wisconsin, act of July 14, 1917, c. 674, sec. 1728c, Laws of 1917, p. 1271.

4. STATUTES FORBIDDING THE EMPLOYMENT OF CHILDREN UNDER SIXTEEN YEARS OF AGE IN MILLS, WORKSHOPS, AND OTHER MANUFACTURING ESTABLISHMENTS, AT NIGHT—AFTER 7 P. M. AND BEFORE 6 A. M.

Alabama, act of February 24, 1915, No. 169, sec. 2, acts of 1915, p. 193. (6 p. m.–6 a. m.)

Arizona, R. S. 1913, sec. 3131, p. 1046.

Arkansas, initiative act No. 1, 1914, sec. 5, Acts 1915, p. 1507.

California, act of June 5, 1915, c. 625, sec. 7, Acts 1915, p. 1204 (18 yrs.; 10 p. m.–5 a. m.).

Connecticut, act of June 6, 1913, c. 179, sec. 3, Public Acts of 1913, p. 1778.

Delaware, Rev. Code 1915, c. 90, sec. 3164, p. 1489.

Florida, Comp. Laws 1914, sec. 2842i, p. 1387. (8 p. m.–5 a. m.)

Idaho, act March 7, 1911, c. 150, sec. 109, Acts 1911, p. 538. (9 p. m.–6 a. m.)

Illinois, act of June 26, 1917, sec. 9, Acts of 1917, p. 516. (7 a. m.–7 p. m.)

Indiana, Burn's Anno. Stat. 1914, sec. 8022c, p. 994. (6 p. m.–7 a. m.)

Iowa, S. Supp. Code 1915, sec. 2477–c, p. 207. (6 p. m.–7 a. m.)

Kansas, act of March 10, 1917, c. 227, sec. 3, Gen. Stats. 1917, p. 318.

Kentucky, Statutes (Carroll) 1915, sec. 331a.7, p. 323.

Louisiana, act of July 6, 1916, No. 177, Acts 1916, p. 408.

Massachusetts, act June 19, 1913, c. 831, sec. 8, Acts & Res. 1913, p. 932. (6 p. m.–6.30 a. m.)

Minnesota, Gen. Stat. 1913, sec. 3845, p. 877. (7 p. m.–7 a. m.)

Missouri, Rev. Stat. 1909, v. 1, sec. 1716, p. 600, as amended by act of April 7, 1911, Laws of 1911, p. 133.

Nebraska, R. S. 1913, sec. 3584, p. 1023. (8 p. m.–6 a. m.)

New Hampshire, act of May 21, 1913, c. 224, sec. 2, Acts of 1913, p. 786.

New Jersey, act of April 17, 1914, c. 252, sec. 6, Laws of 1914, p. 528. (7 p. m.–7 a. m.)

New York, act of April 19, 1912, c. 539, sec. 1, Laws 1912, p. 1103. (5 p. m.–8 a. m.)

North Carolina, Supp. 1913, c. 45a, sec. 1981ee (2).

North Dakota, Comp. Laws 1913, sec. 1410, p. 339. (7 a. m.–7 p. m.)

Ohio, General Code, sec. 12996, as amended by act of May 9, 1913, Acts 1913, pp. 864, 908.

Oklahoma, Rev. Laws 1910, sec. 3733.

Oregon, Lord's Oreg. Laws 1910, sec. 5026, as amended by act of February 21, 1911, c. 138, sec. 5, Laws 1911, p. 186.

Pennsylvania, act of May 13, 1915, c. 177, sec. 4, Laws of 1915, p. 288.

Rhode Island, act of April 23, 1915, c. 1253, sec. 1, Acts 1915, p. 179.

South Carolina, 1912 Crim. Code, c. 16, sec. 423, p. 332, (8 p. m.–6 a. m.)

Tennessee, act of April 7, 1917, c. 77, sec. 2, Public Acts 1917, p. 233.

Vermont, act of April 12, 1917, No. 177, sec. 1, Laws of 1917, p. 202.

Wisconsin, act of July 14, 1917, c. 674, sec. 1728c., Law of 1917, p. 1271.

### 5. STATUTES WEAKENING OR NULLIFYING STANDARD PROVISIONS BY EXEMPTIONS.

#### (a) 14-YEAR LIMIT IN FACTORIES WITH EXEMPTIONS SPECIFIED.

Arizona, R. S. 1913, secs. 3110, 3111, permit for harmless work outside school hours.

California, weekly school holidays and vacation, poverty, act of June 5, 1915, c. 625, secs. 1, 2, Statutes and Amendments to Codes, 1915, pp. 1201, 1202.

Colorado, vacation, Mills Anno. Stat. r. e. 1912, sec. 657, p. 303.

Delaware, canneries, R. C. 1915, c. 90, sec. 3144; poverty, R. C. 1915, c. 90, sec. 3179.

Georgia, poverty (12 years), act of August 14, 1914, No. 426, secs. 1, 8, Laws of 1914, pp. 89, 91.

Idaho, vacation, act of March 7, 1911, c. 159, sec. 166, Session Laws 1911, p. 548.

Indiana, canneries, Burns Anno. Stat. 1914, sec. 8022a, vol. 3, p. 994.

Maine, other than in manufacturing and mechanical establishments, work outside school hours permitted, R. S. 1916, c. 49, sec. 20, p. 753.

Maryland, canneries, act April 11, 1916, c. 222, sec. 1, Laws 1916, p. 436.

Mississippi, act of March 16, 1912, c. 165, sec. 1, Laws 1912, p. 173; act of March 10, 1914, c. 164, acts 1914, p. 212; 14-year limit only for girls.

Nevada, special permit, R. L. 1912, sec. 6824; after school hours, act of March 25, 1913, c. 232, sec. 1, Statutes 1913, p. 354.

Oregon, vacation, act of February 21, 1911, c. 138, sec. 13, Laws 1911, p. 189; act February 17, 1913, c. 62, General Laws, 1913, p. 92.

South Dakota, poverty, act of March 3, 1913, c. 240, sec. 5, Laws 1913, p. 333.

Texas, poverty, act of March 6, 1917, c. 59, secs. 1, 5, General Laws 1917, p. 104.

Virginia, canneries, act of March 27, 1914, c. 339, sec. 6, Acts of Assembly 1914, p. 672.

Washington, poverty, Pierce's Code 1912, ti. 291, sec. 151, p. 1352.

West Virginia, special permit, Hogg's Code, 1913, c. 15h, sec. 530, vol. 1, p. 214.

(*b*) 16-YEAR LIMIT FOR NIGHT WORK IN FACTORIES WITH EXEMPTIONS SPECIFIED.

Colorado, vacation, special permit, Mills Anno. Stat. r. e. 1912, sec. 657, 660, 671, pp. 303, 305, 309.

Maine, perishable products, act of March 31, 1915, c. 350, secs. 2, 8, Rev. Stat., 1916, pp. 1650, 1652.

Maryland, canneries, act of April 11, 1916, c. 222, sec. 2, Laws 1916, pp. 436, 446.

Michigan, canneries, Comp. Laws 1915, v. 2, sec. 5330, p. 2023; act of May 10, 1917, No. 280, Public Acts 1917, p. 709.

Mississippi, in cotton mills, girls only, act March 10, 1914, c. 164, sec. 2, Laws 1914, p. 212.

Virginia, canneries, special permit, act of March 27, 1914, c. 339, sec. 6, Acts of assembly 1914, p. 672.

(*c*) 8-HOUR DAY UNDER 16 IN FACTORIES WITH EXEMPTIONS SPECIFIED.

Colorado, vacation, special permit, Mills Anno. Stat. r. e. 1912, sec. 657, 660, 671, pp. 303, 305, 309.

Indiana, consent of parents, Burns Anno. Stat. 1914, sec. 8022, p. 993.

Maryland, canneries, act of April 11, 1916, c. 222, sec. 2, Laws 1916, pp. 436, 446.

Mississippi, in cotton mills, girls only, act Mar. 10, 1914, c. 164, sec. 2, Laws 1914, p. 212.

Utah, canneries, girls, act of March 12, 1917, c. 80, sec. 8, Laws of 1917, p. 242.

Washington, girls only, Pierce's Code 1912, ti. 291, sec. 145, p. 1351.

(*d*) 16-YEAR LIMIT IN MINES WITH EXEMPTIONS SPECIFIED

Iowa, vacation S. Supp. Code 1915, c. 8, sec. 2477-b, p. 207.

West Virginia, vacation, act of February 11, 1915, c. 10. sec. 33, Laws of 1915, p. 98.

## 6. STATES WITHOUT STANDARD PROVISIONS.

Senate Committee Report No. 358, Sixty-fourth Congress, pages 10 and 11, presented April 19, 1916, cites the following:

(a) No 14-year limit in factories:

New Mexico. North Carolina. Wyoming.

(b) No 16-year limit for night work in factories:

Georgia. South Dakota. Washington.
Maryland. Texas. West Virginia.
Nevada. Utah. Wyoming.
New Mexico.

(c) No 8-hour day under 16 in factories:

Alabama. Michigan. South Dakota.
Connecticut. New Hampshire. Tennessee.
Delaware. New Mexico. Texas.
Florida. North Carolina. Utah.
Georgia. Oregon. Vermont.
Idaho. Pennsylvania. Virginia.
Louisiana. Rhode Island. West Virginia.
Maine. South Carolina. Wyoming.
Maryland.

(d) No 16-year limit in mines or quarries:

Delaware. Massachusetts. North Carolina.
District of Columbia. Michigan. North Dakota.
Florida. Minnesota. Oregon.
Georgia. Mississippi. Rhode Island.
Indiana. Missouri. South Carolina.
Idaho. Nebraska. South Dakota.
Kansas. New Hampshire. Utah.
Louisiana. New Jersey. Virginia.
Maine. New Mexico. Wyoming.

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# CHILD LABOR LAW

## No. 704

## In the Supreme Court of the United States.

OCTOBER TERM, 1917.

W. C. HAMMER, UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA, APPELLANT,

*vs.*

ROLAND H. DAGENHART, AND REUBEN DAGENHART AND JOHN DAGENHART, MINORS, BY ROLAND H. DAGENHART, THEIR NEXT FRIEND, APPELLEES.

*Appeal from the District Court of the United States for the Western District of North Carolina.*

## BRIEF FOR APPELLEES.

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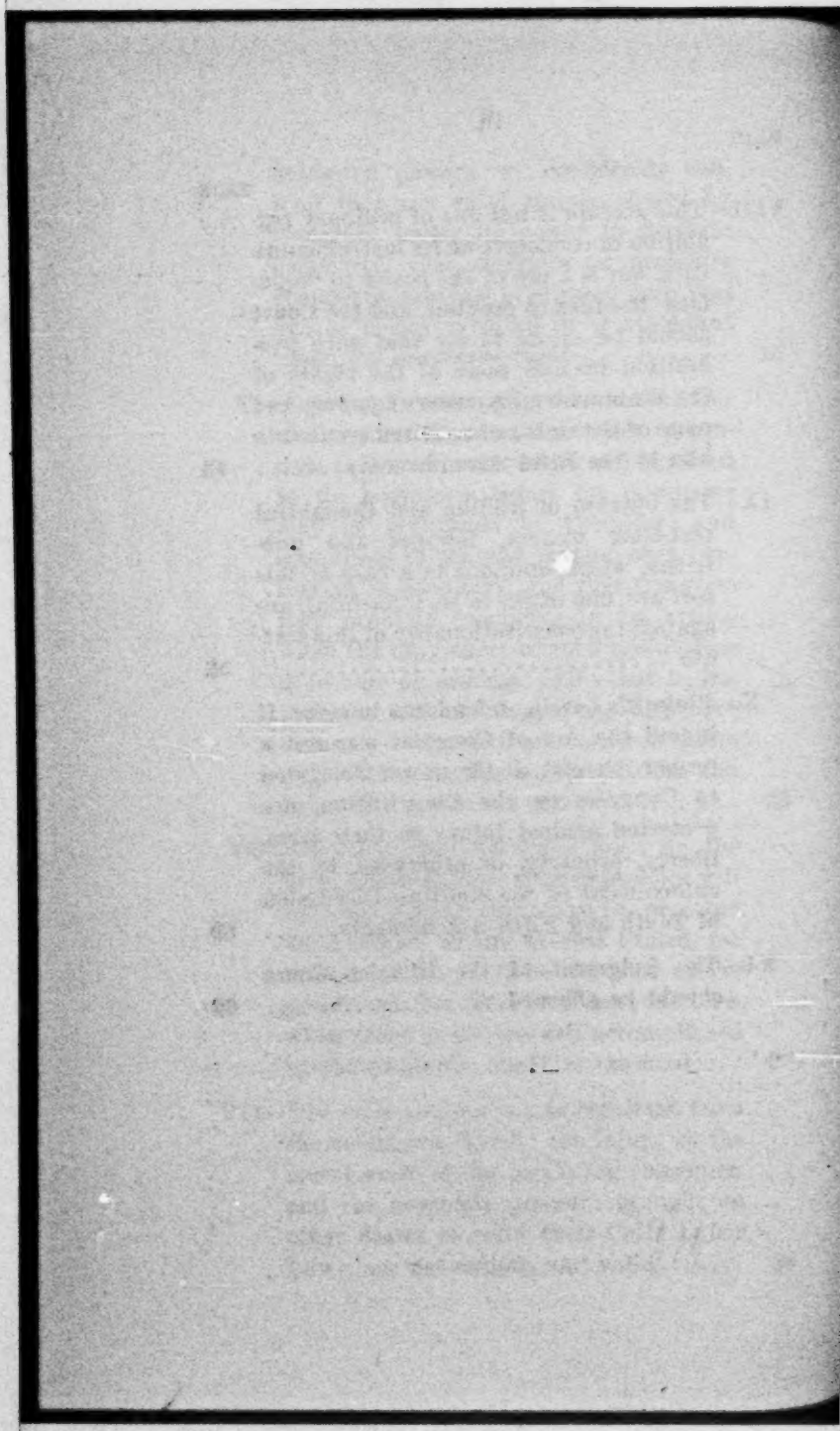

IN THE

# Supreme Court of the United States.

W. C. HAMMER, United States Attorney for the Western District of North Carolina,
Appellant,

vs.

ROLAND H. DAGENHART and REUBEN DAGENHART and JOHN DAGENHART, Minors, by Roland H. Dagenhart, their next friend,
Appellees.

No. 704.

## BRIEF FOR APPELLEES.

### STATEMENT OF CASE.

This is an appeal by the United States Attorney, one of the defendants in the Court below, from a judgment in the District Court for the Western District of North Carolina, rendered August 31, 1917, holding unconstitutional and void an Act of Congress entitled "An Act to prevent interstate commerce in the products of child labor and for other purposes," approved September 1, 1916 (Record, p. 15).

The Act of Congress aforesaid forbids the shipment in interstate or foreign commerce of any article produced by a factory in which within thirty days prior to the removal of the product, a child under the age of fourteen years has been permitted to work at all, or where a child, under the age of sixteen years, has been permitted to work in any way except as provided by the Act. While the Act was approved September 1, 1916, it provided by its own terms that it should take effect one year after its approval.

This suit was brought by complaint filed August 9, 1917 (Record, p. 1), by a father and two sons, employees in a cotton mill, located at Charlotte, North Carolina, to-wit: the mill of the Fidelity Manufacturing Company, against that Company and William C. Hammer, United States Attorney for the Western District of North Carolina. The complaint, besides the formal allegations, alleged that the father had in his home and custody his two sons, co-plaintiffs, one under the age of fourteen years, and one over the age of fourteen years but under the age of sixteen years, and that all three, father and two sons, were employed in the cotton mill of the defendant Fidelity Manufacturing Company, all in good health and capable of performing the services required of each; that the work of each had been entirely satisfactory, but that, solely on account of the said statute as aforesaid and its imminent enforcement, the plaintiffs had been advised that on September 1, 1917, when the statute became effective, the cotton mill defendant would discharge from its employ, absolutely, the plaintiff under the age of fourteen years, and would curtail the hours of labor, as provided by the Act, and the

pay, of the plaintiff over fourteen but under sixteen years of age, all to the pecuniary loss of the plaintiff father, who was a man of small means, with a large family, to whom the receipt and use of the compensation arising from the service of each of said minor sons was essential for the comfortable support and maintenance of the family, including said minors.

The complaint alleged the unconstitutionality and invalidity of the statute and that its enforcement was about to involve the invasion of the property right of the plaintiff-father in the labor and wages of said minors, and the invasion, also, of the right of the minors, plaintiffs, who desired to continue in the cotton mill work as their life vocation. It sought an injunction against the defendant cotton mill to prevent the discharge of the minor plaintiffs on account of the going into effect of said statute, and an injunction against the United States District Attorney charged with the enforcement of the statute, to prevent his enforcing it by any proceeding or prosecution against the defendant company (Record, pp. 1-6).

The defendant cotton mill company (Fidelity Manufacturing Company) answered the complaint, admitting all the allegations, except the allegation of unconstitutionality and invalidity of the statute aforesaid. It expressly admitted that, engaged as it was in shipping its products in interstate commerce, it purposed to discharge from its service the minor plaintiff under the age of fourteen, and curtail the hours of labor and the pay of the minor plaintiff over the age of fourteen, but under the age of sixteen (Record, pp. 11-14).

The defendant, William C. Hammer, United States Attorney, replied to the complaint by a mo-

tion to dismiss, which, under the present practice, is tantamount to a demurrer to the complaint, the ground for his motion being "because the bill which seeks to enjoin the enforcement of the Act of Congress known as the Child Labor Law (39 Stat., 675) on the ground that it is unconstitutional and void, is without equity in that said Act is valid and constitutional" (Record, p. 14).

The propriety of this suit, as a test of the constitutionality of the statute in question, is not questioned by the defendant-appellant. It seems to be entirely justified by the case of *Truax vs. Raich* (239 U. S., 33). In that case the employee brought a suit against the employer, and the Attorney-General of the State of Arizona, upon the allegation that, because of the going into effect of a statute of the State, the employer was about to discharge the plaintiff; that the statute involved was a void statute; and the action sought an injunction against the employer and Attorney-General of the State charged with the enforcement of the statute alleged to be a void statute. The propriety of the suit was attacked, but the Court held that the right to earn a livelihood and to continued employment, unmolested by efforts to enforce a void statute, is a right entitled to protection in equity.

Of course, the complaint in this case was drawn upon the precedent of the *Truax Case*, and while the *Truax Case* was an action brought against the employer, and the prosecuting officer of the *State* charged with the enforcement of a *State* statute alleged to be void, whereas the present suit was brought against the employer and the prosecuting officer of the *United States* charged with its enforcement on the allegation that a *United States* statute

is void, it is clear that this difference involves no distinction: even since the decision in the *Truax Case* this Court approved this method of test of a Federal statute in passing upon the constitutional question that involved the validity of the Adamson Law (*Wilson vs. New et al.*, 243 U. S., 332).

## Statement of Questions.

The only questions involved in this case are:

First: Whether the Act of Congress referred to is within the constitutional authority of Congress to enact, and,

Second: Whether, if beyond such constitutional authority, it is a void statute, and so to be declared at the suit of an individual.

In short substance the Act provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article the product of any mine or quarry, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or product of any mill, cannery, workshop, factory, or manufacturing establishment, in which within thirty days prior to the removal of such product, children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian. In order to secure the proper enforcement of the Act, the Secre-

tary of Labor, or any person duly authorized by him, is given authority to enter and inspect the mines, quarries, mills, canneries, workshops, factories and manufacturing establishments in which goods are produced or held for interstate commerce. The District Attorney in each district is required to prosecute any violations reported by the Secretary of Labor, or reported by anybody else with satisfactory evidence. A violation of the Act is made a misdemeanor so far as the shipper from the State of manufacture is concerned, but dealers within the State of manufacture may protect themselves by securing a certificate from the manufacturer that no child had been employed in a way not approved by the act within thirty days prior to the removal of the goods from the factory. There are provisions which make the producer, who falsely gives a certificate, liable to the penalties of the Act.

Even here it is not amiss to analyse briefly and superficially the provisions of the statute, as applicable to factories. The products of child labor are not, as such, barred from interstate commerce; a manufacturer may employ children as he pleases in the fabrication of his products, and having discharged such children he may, thirty days thereafter, with impunity, ship the products that they fabricated. On the other hand, if his factory is engaged in the fabrication of some articles intended for interstate commerce, and other articles intended for local sale, he may not offer for shipment in interstate commerce any of its products, although they were entirely fabricated by man labor, if in any work in the factory, within thirty days of such shipment, even if such work had solely to do with

the production of products intended for local sale and consumption, there was involved the labor of children in a way not approved by the Act.

Again, while the owner of a factory may remove goods from his factory and offer them for interstate shipment, if he shall for thirty days theretofore in the operation of his factory comply with the wishes of Congress, a dealer within the State who, within that thirty days, has received goods from the factory, may not, at any time, offer these goods for interstate shipment—if the goods are removed from the factory within thirty days after the employment of the children in the factory in any branch thereof in a way not approved by Congress, then these goods are permanently contraband, so far as interstate commerce is concerned.

This is an Act of Congress, and the first question is: Is it within or without the powers delegated to Congress by the United States Constitution?

In determining that question it may be safely said that the following words in the Constitution include all the words that are possibly relevant:

> "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. (Preamble to Constitution.) * * * All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives (Article 1, Section L). * * *

**The Congress shall have power * * * to regulate commerce with foreign nations and among the several states, and with the Indian tribes (Article 1, Section 8, Clause 3). * * * To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof (*Ibid.*, Clause 18). * * * This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding (Article 6, Clause 2). * * * No person shall be deprived of life, liberty, or property, without due process of law (Amendment 5). * * * The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people (Amendment 10)."**

## ARGUMENT.

### I.

**THE REGULATION OF MINIMUM AGES, AND MAXIMUM HOURS, AND KINDS OF EMPLOYMENT, AT AND IN WHICH CHILDREN ARE TO BE PERMITTED TO WORK, IS DISTINCTLY A MATTER FOR LOCAL CONTROL, AND IS A MATTER THAT HAS LONG BEEN, TO AN EXTENT, AND IS NOW ADEQUATELY, LOCALLY CONTROLLED BY THE ACTIVITIES OF THE VARIOUS STATES.**

The United States is a vast territory. Considering its States and Territories alone, and without its dependencies, such as Porto Rico, Hawaii and Philippines, it covers many degrees of latitude as well as longitude, with infinite variations of climatic, social and other conditions. Even if they are of the same race there is an earlier maturity, physically at least, in a child born and bred in Louisiana than in a child born and bred in Maine —the laws of Louisiana permit marriage at twelve years. We are not, though, all of the same race, and the negro reaches physical maturity at an earlier age than the white. The distribution of wealth is far different in one section from another —the density of population varies in one section as compared with another.

In virtually every section of the country, as well as in other countries, men and women have for many years considered the matter of the employment in industrial activities of women and children. So far as children are concerned, and their hours and methods of employment—whether with respect

to the kind of vocation or the time of each day employed—it has never been doubted that the regulation of such is involved in the police power of the States. So, in every State in the Union, legislation has been enacted with respect to the employment of children. These regulations have taken into account the conditions of the State affected, having regard to climate, distribution of wealth, social conditions and other such considerations. New York has statutes that relate to the employment of children in sweatshops, but sweatshops are unknown in North Carolina. Georgia has taken into account that the father is naturally and normally the principal producer of material support for the family, and permits the son of a widow to go to work at an earlier age, and work for longer hours, than is permitted to the son whose father is still living. Most of the State legislatures have seemed to believe either that out-door work is more nearly harmless for a young boy than factory work, or that farmers need the services of their sons, and have not attempted to regulate either the minimum age or the maximum hours so far as farm work is concerned.

Not only have the States their various statutes relating to child labor, but in many of them there have been progressive steps taken to protect the health, vigor and safety of the coming generation. Of course these steps have, in a general way, been coincident with the progress of the States in wealth and in prosperity. Maybe it would be ideal (and maybe it would not be) if boys did no productive work at all but devoted their whole time, until they reached the age of twenty-one, to physical, mental and moral preparation for the life that lies before them. But it cannot be denied that a boy should

not live up to this ideal if doing so involves the starvation of his mother and sisters. In other words, and without elaboration, whatever may be said of the evils of child labor, and the rules and regulations proper for the abolition or amelioration of the evil, it cannot be denied that the making of these rules and regulations constitutes a part of the police power properly exercisable by the local governments, and that what might be entirely wise and humane in a rich community, of cold climate, where weather conditions make ventilation difficult, inhabited chiefly by Anglo-Saxons, would be an unwise burden in a community where poverty still stalks, where weather conditions may make possible constant fresh air even in a factory, and where the population is, in whole or in large part, of some other and earlier maturing race than the Anglo-Saxon.

[NOTE: By courtesy of counsel for appellant, tentative draft of his brief has been available to us in the final revision of this brief. Appendix B to the brief of appellant sets out under what appellant conceives to be proper headings, a fairly complete analysis of the provisions of State statutes relative to child labor. A consideration of these State statutes seems to us to show how strikingly and singularly overdrawn are the contentions in the body of the brief of appellant that attempt to show a national evil with which the States are unable or unwilling to cope: On page 21 of appellant's brief a speech is quoted, to the effect that a few States of the South permit little children eight, nine or ten years old to work, whereas, as shown by Appendix

B to the same brief, there are only three States in the Union that permit children to work in factories under the age of fourteen years—New Mexico, North Carolina and Wyoming (p. 82, appellant's brief), and North Carolina is the only one of these States that is a Southern State or engaged in the cotton manufacturing business; North Carolina permits no child to work under twelve years old, and none under thirteen except as apprentices (Pells Revisal N. C. Statutes, §§3362-64).

This Appendix B to appellant's brief (pp. 75-82), when carefully read and note is taken of the dates of the various statutes, is eloquent in its testimony to the progress being made in the States, *pari passu* with their growth in wealth and prosperity, in the protection of children, and eloquent in refutation of the argument, that the evil involved is a national evil, where the laxity of State legislation has brought about a condition where the Constitution is to be strained, if not broken, in order that there may be any practical relief.

Rumors such as were stated in debate in Congress as to recruits in England during the Boer War having been rejected in cotton manufacturing communities (appellant's brief, p. 13), are not very persuasive. It is definitely, and, we believe, reliably, stated to us, that in the selective draft imposed during the year 1917, the proportion of the physically fit found in cotton mill villages of the South was substantially greater than among the rural population. In 1916 the Metropolitan Life Insurance Company made a thorough sickness survey in North Carolina, with a study covering

43,468 white persons, with the result that the comparison between textile workers and those not textile workers, expressed in number of sick per thousand, was as follows:

| | Male | | Female | |
|---|---|---|---|---|
| Age. | Textile Workers. | Non-Textile Workers. | Textile Workers. | Non-Textile Workers. |
| Under 15 | 10.1 | 15.6 | 15.1 | 14.3 |
| 15 to 24 | 11.7 | 20.0 | 24.2 | 25.2 |
| 25 to 34 | 23.3 | 22.1 | 28.7 | 28.5 |
| 35 to 44 | 21.4 | 31.4 | 41.5 | 38.5 |

(*National Industrial Conference Board Research Report No. 4*, p. 49.)]

II.

THIS STATUTE IS AN ATTEMPT BY CONGRESS TO AVERAGE THE CONDITIONS OF CLIMATE, WEALTH AND RACIAL CONTENT OF THE VARIOUS STATES, AND TO IMPOSE UPON THOSE STATES AND THEIR INHABITANTS THE CONGRESSIONAL VIEW AS TO THE EMPLOYMENT OF CHILDREN IN FACTORIES AND MINES.

Now, it is not to be denied that the Congress of the United States, in its passage of the statute in question, showed that it had reached a conclusion, taking the whole country over, and, perhaps, averaging its conditions of climates, wealth and race content, that while it had no objection to children working on farms, it did object to children working in factories, quarries, mines and mills, if they were under a certain minimum age, or were permitted to work more than a maximum number of hours per

day. It cannot be denied that it was the purpose of Congress to impose its wish in this regard on the people in all the States, without reference to their local conditions.

The question to be decided in this case is whether this can be accomplished. *The question in this case is (and we make this statement with the utmost respect) whether those who earnestly favor an absolutely nationalized control of every function and activity of life, and the complete elimination of the States as political entities, have hit upon a new and yet unused tool to accomplish completely their purposes.*

III.

**INTERSTATE COMMERCE—IN PERSONS OR IN GOODS—HAS COME TO TOUCH SO INTIMATELY EVERY PERSON IN EVERY STATE, THAT IF CONGRESS MAY SAY THAT THOSE PERSONS, OR HIS PRODUCTS, WHOSE CONDUCT IT DOES NOT APPROVE, MAY NOT ENTER THE CHANNELS OF SUCH COMMERCE, THERE REMAINS NOTHING IN RESPECT TO WHICH IT MAY NOT FOR ALL PRACTICAL PURPOSES IMPOSE ITS WILL, AND THE STATES HAVE LOST THEIR POLICE POWER.**

Whatever was the condition of affairs when our Constitution was written, the matter of interstate transportation is to-day a matter of the intimate and personal concern of almost every citizen. Very many of us are constantly, ourselves, in interstate travel, and those of us who stay at home are engaged in the production of things whose prices and disposition depend on either interstate or foreign transportation. Congress may, under the Constitution, regulate interstate commerce, and that in-

cludes personal and property transportation. If Congress may say that those products shall be denied the channels of interstate trade whose method of production it does not approve, then it certainly may say that those persons may not be transported whose conduct it does not approve. These statutes may be, in form, regulations of commerce, but they are in fact regulations of the intimate, personal, local conduct of every man and woman.

We have no purpose to attempt to draw fanciful conclusions as to the ultimate effect of a given decision of the Court, but it is fair to look squarely in the face the logical and the inevitable effect of a decision—not what will likely be the progressive and ultimate effect of such a decision, but what is necessarily involved in such decision. Chief Justice MARSHALL, in *McCulloch vs. Maryland* (4 Wheat., 316, 431), said:

> "The power to tax involves the power to destroy."

And Chief Justice WHITE, in *Knowlton vs. Moore* (178 U. S., 41, 60), said that:

> "The power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope."

On this high authority, we maintain that whatever may be one's feeling as to the wisdom or unwisdom of permitting a boy under fourteen, under

any circumstances, to work in a factory, or permitting a boy under sixteen to work after a given hour in the evening, there is practically involved in this case the right of Congress to regulate, under the guise of a commerce regulation, every relation of life—even though it may happen that in this particular instance "no great harm may be caused by the exercise of the" authority. If the views of those who assert the constitutionality of this method are sound, there is no practical necessity, nor reason, for State Legislatures, and certainly none for constitutional amendments. Of course we may have a minimum wage law, applicable to all industries, passed on the demand of organized or unorganized labor, by the simple Congressional enactment that no factory may tender goods for interstate shipment which does not pay a minimum scale of wages. If Congress conceives that the use of commercial fertilizers are not so good for the permanent prosperity of the country as the slower processes of vegetable fertilization, then it may prevent the wheat produced by commercial fertilizers from being shipped in interstate trade. More than that, and we protest that it is not fanciful, but under the terms of this statute directly involved, Congress may by the same token, and without amendment to the Constitution, enact complete prohibition of the liquor traffic by forbidding personal travel or shipment of goods by any man who, within thirty days previous to such travel, or shipment, has taken a drink of whiskey.

We do not believe with those who hold that there has been a discovery of a new instrument, whereby Congress may take over the entire control of processes of production, matters of personal morals and decency, and the other regulative powers that

have, since the foundation of our Government, been asserted and assumed to be included in the police power in, and reserved to, the States. A great many citations from the opinions of this Court might be given as the basis of our belief—just here we make three apposite quotations:

"The direct and necessary result of a statute must be taken into consideration in deciding as to its validity, even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effects" (*Collins vs. New Hampshire*, 171 U. S., 30, 33-34).

"If it be held that the term (commerce) includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign commerce?" (*Kidd vs. Pearson*, 128 U. S., 1, 21).

"The control of Congress over commerce among the States cannot be made a means of exercising powers not entrusted to it by the Constitution" (*Pipe Line Case*, 234 U. S., 548, 560).

## IV.

**FREELY CONCEDING THAT, THOUGH CONGRESS HAS NO POLICE POWER, IT MAY, NEVERTHELESS, ACCOMPLISH WHAT MAY BE CALLED A POLICE RESULT IN THE EXERCISE OF ANY OF ITS DELEGATED POWERS, WE CONFIDENTLY CONTEND THAT ANY VALID STATUTE PASSED BY CONGRESS, UNDER ITS POWER TO REGULATE COMMERCE, THAT RESTRICTS OR PROHIBITS COMMERCE, MUST BE PREDICATED ON A REAL EVIL OR INJURY INVOLVED IN, OR ATTENDANT UPON, THE COMMERCE ITSELF.**

In the *Lottery Case* (188 U. S., 321), there was involved the constitutionality of an Act of Congress for the suppression of the transportation of, and traffic in, lottery tickets. This Court was severe in its condemnation of the evils of the lottery:

> "It infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple."

Of course this evil was an evil involved in, and convenienced by, the transportation of the tickets, and the Court gave the gist of its opinion in these words:

> "As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the 'widespread pestilence of lotteries' and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another."

In *Hipolite Egg Company vs. The United States* (220 U. S., 45), the Court determined the constitutionality of the Pure Food and Drug Act of June 30, 1906, which prohibited the introduction into any State or Territory, from any other State or Territory, of any adulterated article of food or drugs; the case involved also the construction of that statute and whether the statute provided for the seizure of adulterated articles, and, if so, whether such provision was valid, while in the unbroken package in the hands of the consignee. The Court held the statute constitutional, and that the right of seizure existed:

> "We are dealing, it must be remembered, with illicit articles—articles which the law seeks to keep out of commerce because they are debased by adulteration, and which law punishes them (if we may so express ourselves) and the shipper of them. * * * Can they escape the consequences of their illegal transportation by being mingled at the place of destination with other property? To give them such immunity would defeat, in many cases, the provision for their confiscation and their confiscation or destruction is the especial concern of the law. The power to do so is certainly appropriate to the right to bar them from interstate commerce, and completes its purpose, which is not to prevent merely the physical movement of adulterated articles, but the use of them, or rather to prevent trade in them between the States by denying to them the facilities of interstate commerce. And appropriate means to that end, which we have seen

is legitimate, are seizure and condemnation of the articles at their point of destination in the original, unbroken packages" (220 U. S., 58).

In *Hoke vs. United States* (227 U. S., 308), this Court considered the White Slave Traffic Act of 1910, which did not forbid the travelling of a prostitute, but forbade the transportation or assistance in obtaining transportation of any woman or girl for the purpose of prostitution. The charge was not against the prostitute or against the carrier, but it was against an individual who, as was alleged, did knowingly induce and entice a woman to go from one State to another State in interstate commerce for the purpose of prostitution. The constitutionality of the statute was asserted:

> "If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to, and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."

The foregoing are the cases which, with their accompanying cases (such as the *Caminetti Case*, on the White Slave Traffic Act, 242 U. S., 470; *McDermott vs. Wisconsin*, on the Pure Food Act, 228 U. S., 115) are presumed to form the basis for the contention, first (which we cheerfully admit), that Congress may regulate commerce with the view of achieving a police purpose, that is, a purpose that has its origin in concern for the physical, mental or moral well being of the citizens, and,

second (which we resolutely deny), that therefore an Act of Congress restricting or prohibiting commerce may be sustained if it tends to prevent or discourage something which Congress believes is injurious physically, mentally or morally to a citizen, whether such evil precedes or follows, is facilitated or not, is stimulated or retarded, by the act of commerce. We do not conceive these decisions justify that claim, but we do conceive that they themselves establish the contention that the evil whose elimination justifies a restriction or prohibition of commerce, whether of persons or things, must be the evil involved in, or assisted by, the commerce.

The people of the United States were entitled to protection against the "widespread pestilence" of lotteries which reached them through interstate commerce in lottery tickets; the people of the United States were entitled to protection against the adulterated foods and drugs which reached them through the channels of interstate commerce; the people of the United States were entitled to protection against the utilization of interstate transportation facilities for the purpose and intent of stimulating and aiding prostitution,—and so these statutes were upheld.

The product of a factory is not unsanitary or adulterated or unwholesome because it has been touched, during the process of manufacture, by a child's hands, or because a boy under fourteen has aided his father or mother at the spinning frame, or because a boy under sixteen has carried water to the workers after six o'clock in the afternoon. This statute itself recognizes the validity and accuracy of that statement, for under it the owner of

a factory may, if he sees fit to do so, employ a child howsoever young in the fabrication of his products, and having discharged him, he may, thirty days after the discharge, ship the products with perfect impunity. Indeed, seasonal vocations—such, for instance, as a canning factory—which habitually have a season of production followed, at an interval, by a season of sale, may proceed unaffected by this law; the salmon cannery, which collects and cans the fish in the season closing September first and begins its shipments November first, is not affected.

The *Lottery Case*, therefore, is not analogous to the case at bar, but it would have been if the statute had provided (and that statute had been upheld by the Court) that no printer should put into interstate commerce any of his products, even hymn books or Bibles, if his presses had been within thirty days before the shipment engaged, to any extent, in the printing of lottery tickets. *Hoke vs. United States* is not analogous, but it would have been if the statute had provided (and the Court had sustained it) that no one who had within thirty days been guilty of an immoral act should present himself as a passenger for interstate transportation. *Hipolite Egg Co. vs. United States* is not analogous, but it would have been if the statute had provided (and it had been sustained by the Court) that no producer of foods or medicines, who had within thirty days produced any adulterated foods or medicines, should make shipment of any food or medicine, howsoever pure, in interstate commerce.

## V.

**ARGUMENT CONTENDING FOR THE VALIDITY OF THIS STATUTE SEEMS SOMETIMES TO CONCEDE THAT THERE MUST BE AN EVIL INVOLVED IN THE COMMERCE BEFORE THE COMMERCE MAY BE PROHIBITED BY CONGRESS; AND SOMETIMES TO CONTEND THAT NO SUCH CONCESSION IS NECESSARY, AND THAT CONGRESS MAY PROHIBIT COMMERCE IN AN ARTICLE WHEN THE ONLY EFFECT OF SUCH PROHIBITION IS TO CURE AN ASSUMED EVIL—THAT IS, IMPOSE THE WILL OF CONGRESS AS TO PROPER CONDUCT—WHEN SUCH ASSUMED EVIL EXISTS ONLY WITHIN THE STATE OF PRODUCTION AND BEFORE THE COMMERCE BEGINS.**

In the Court below, eminent counsel for the defendant-appellant were in disagreement as to the theory upon which this statute was to be defended, as within the power delegated to Congress to regulate interstate commerce. One counsel seemed to concede that before commerce in a given article could be prohibited or restricted by Congressional action there must be an evil involved in, or arising out of, the commerce, and he suggested two evils of national concern that arise out of interstate commerce in the products of child labor. First, that there is a national abhorrence of the evils of child labor, somewhat as there was in certain sections of the country prior to the Civil War an abhorrence of the institution of slavery, and that it is competent for Congress, even as between citizens of various States, to protect a citizen of State A against being the unwitting participant in the crime of employing child labor which would be involved in his purchase and consumption of an article produced in a

factory in which child labor was employed, even though that factory is in State B, and even though passage, sale and consumption of that article involved no possible injury to anyone. Second, if the legislature of State A has adopted enlightened laws with respect to child labor, that legislature and that State are entitled to protection against the economic pressure that will be exerted on it to induce it to lower its standard if the products from State B, which has adopted a less enlightened policy with respect to child labor, may come into State A and compete with the products of manufacturers of State A.

The other counsel for defendant-appellant in the Court below disagreed with this view, because he thought it valid and proper for Congress to regulate the prior conduct of the persons who desire to engage in interstate commerce by prohibiting the entry of the goods of such persons into commerce unless they, the persons, conform to a rule of conduct prescribed by Congress. He represented the group who frankly believe that in this power to regulate commerce there resides in Congress a method of regulating the entire conduct of the modern man. He was not affrighted by the suggestion or illustration that if this statute is valid a statute would be also valid that prohibits the movement in interstate commerce of the person or property of a man who, thirty days before such movement, had taken a drink of whiskey, or who secured a divorce on grounds other than those thought proper by Congress, or who paid less than the minimum scale of wages in his factory, or who voted against woman suffrage. Stated precisely, his position is this: (We put the words in quotation but they are not his words, but our understanding of

his meaning.) "The power in Congress to regulate "commerce among the States is, like the power to "regulate foreign commerce, absolute and subject to "no limitations except as affirmatively stated in the "Constitution itself. A Federal statute which pro- "vides what goods may be the subject of—or what "persons may participate in—interstate commerce "may not be questioned as beyond the delegated "power of Congress. No individual may claim "that an Act of Congress, which forbids his embark- "ing or engaging in interstate commerce, is void be- "cause its necessary effect is to encroach upon "the power of the State; the only protection that "the individual citizen has with respect to any Act "of Congress that forbids or restricts his right to "engage in interestate commerce, must be the Fifth "Amendment, which forbids the individuals being "deprived of life, liberty or property without due "process of law. The Fifth Amendment in its limi- "tation on the power of Congress is identical in its "effect with the Fourteenth Amendment, which pro- "vides that no State shall deprive any person of life, "liberty or property without due process of law. If "the conduct, therefore, sought by Congress to be "suppressed by its prohibition or restriction of in- "terstate commerce is conduct which the State could "suppress under its police power by direct penalties, "then the Fifth Amendment is not violated by Con- "gress to the injury of the individual, just as the "Fourteenth Amendment would not be violated by "the State Legislature by the enactment of a stat- "ute designed for a similar purpose under the police "powers." That is, the State may in the exercise of its police power, perhaps, forbid its citizens drinking whiskey, therefore, says counsel, Congress may forbid a citizen who has taken a drink of whiskey

from engaging in interestate commerce. The State may certainly forbid adultery, therefore, says counsel, Congress may discourage adultery by forbidding anybody who has practiced it to engage in interstate commerce. The State may certainly forbid a divorce except on specified grounds, therefore, says counsel, Congress may limit the causes for divorce, and forbid interstate commerce to those who secure a divorce on other than specified grounds.

[NOTE: This brief was principally prepared without opportunity to see the brief to be filed in this Court on behalf of appellant, but, as hereinbefore stated, such opportunity has been given in time for revision of this brief. It would seem that the brief in this Court of appellant argues the case from the point of view of both counsel for defendant-appellant in the Court below. In sections 3 and 5 of argument 2 of his brief (pp. 16-36), there is elaborate argument as to the economic pressure to relax in their child labor laws brought on States to which shipments are made, and in section 4 of argument 2 (pp. 22-23) there is a shorter argument that the commerce makes unwilling parties in the States to which the goods are shipped, to practices deemed immoral. All of this seems in line with the contention of the first counsel in the Court below. But in sub-section *b* of section 2 of argument 3 (p. 41) and in section 2 of argument 4 (pp. 62-67) the position of the second counsel is argued, to wit: that the prohibition of shipments in interstate commerce may have the effect only of remedying an evil in the State of production, and, therefore, presumably, an evil antecedent to, and not in any way con-

nected with, the commerce. This seems to us only another way of saying that a person may be forbidden to engage in interstate commerce unless he complies in his pre-commerce conduct with conditions that Congress believes to be good for the welfare of himself and his community. In section 1 of argument 3 (pp. 36-38), the appellant's brief seems also to follow the line of the second counsel in the Court below, in its argument that the only protection to the individual is in the Fifth Amendment—the due process amendment—that the individual may not complain at the act of Congress in enacting legislation beyond its delegated powers, but his only complaint must be that the statute is a taking of his life, liberty or property without due process of law,—that the Federal act is unreasonable, whimsical and uncalled for, in the same way and to the same extent, as would cause the Courts to hold it unconstitutional under the Fourteenth Amendment, if enacted by a State legislature under the police power.]

## VI.

### THE VIEW THAT CONGRESS MAY, BY THE FORM OF THE STATUTE, THUS IMPOSE ITS WILL ON PROCESSES OF MANUFACTURE, OR OTHER LOCAL AFFAIRS, IN THE VARIOUS STATES, FOR WHAT IT CONCEIVES TO BE THE GOOD OF THE PEOPLE OF THE STATE OF MANUFACTURE, WHEN THERE IS NO REAL EVIL ACCOMPLISHED BY THE COMMERCE ITSELF, IS UNSOUND.

We protest that this view brings about practically the elimination of the States, and makes of

the Constitution, and the Tenth Amendment to it that provides that the powers not delegated to the United States by the Constitution are reserved to the States respectively, or to the people, a mockery.

In *Hoke vs. United States* (*Ibid.*), this Court said:

> "There is unquestionably a control in the States over the morals of their citizens, and it may be admitted it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States cannot reach and over which Congress alone has power; and if such power be exerted to control what the States cannot, it is an argument for,—not against—its legality" (p. 321).

In the suit at bar there is no domain involved which the State cannot reach,—there is a cotton mill located in Charlotte, North Carolina, in which men, women, boys and girls are employed. Over the operation of that cotton mill the State of North Carolina, through its police power, has complete and absolute control. The fact that the product of that mill is intended for interstate and foreign trade does not in any way make the operation of it interstate commerce, but leaves it domestic manufacture subject to the most minute control of the State Legislature. (*Coe vs. Errol*, 116 U. S., 517.) The Legislature of North Carolina has legislated with respect to minimum age of employees and maximum hours of labor, and its laws are definitely and indisputably effective and obeyed in that mill.

In 1906 Congress passed an Employers' Liability statute. The question of its validity came before this Court (207 U. S., 463), and as interpreted by the Court it created a rule of liability as between the carrier and its employees applicable only to carriers engaged in interstate commerc, but as between them and their employees applicable to all employees, whether such employees were engaged in interstate commerce or not. As so construed, this Court condemned the Act as unconstitutional, in language that seems to us decisive in this case:

> "It remains only to consider the contention which we have previously quoted, that the Act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. *It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern.* It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since *it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress.* It is apparent that if the contention were well founded *it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations*

*of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."* (*Employers' Liability Cases*, 207 U. S., 463, 502; *italics ours.*)

Is it conceivable that that Act distinctly applicable as it was, only to interstate carriers, and unconstitutional on the ground that it was held unconstitutional, would have been entirely constitutional and valid if, instead of providing that every carrier engaged in interstate trade should recognize the prescribed rule of liability in settling with its employees for accidental injuries, it had provided that no carrier should engage in interstate business within a given time, who denied the rule of liability with respect to accidental injuries of its employees that Congress thought advisable?

In 1898 Congress passed an Act prohibiting any railway engaged in interstate commerce to discharge an employee because of his membership in a labor organization. This Court condemned the Act as unconstitutional (*Adair vs. The United States*, 208 U. S., 176) and in the course of its opinion said:

"Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his

part. If such a power exists in Congress, it is difficult to perceive why it might not by absolute regulation require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as, in any just sense, a regulation of interstate commerce. We need scarcely repeat what this Court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution" (p. 179).

Is it conceivable that Congress could have accomplished precisely the same effect as the Court in this *Adair Case* held was not validly accomplished by providing that no carrier should operate its trains in interstate commerce if it had within a given time previous to such attempted operation discharged an employee because of membership in a labor union?

Seriously, it seems to us impossible to make the serious statement of such a contention. Formalism and technicalities cannot be any more commended when used or applied to uphold a statute than when used or applied to strike it down.

The Constitution of the United States is a written instrument, to be construed as any other instrument:

> "As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said" (Gibbons vs. Ogden, 9 Wheat., 1, 188).

Is it to be said that a Congressional statute dealing with concerns whose daily business is interstate commerce, as railroad companies, is unconstitutional because it affects the relations of such railroad companies in matters outside of interstate commerce,—and yet the magic of form is such that precisely the same result and infinitely more might be constitutionally obtained by simply laying down the desired conduct and saying to the railroad company or to the manufacturing concern or to anyone else who desires to engage in interstate commerce: "We cannot demand that you pursue this line of conduct, but we do say if you do not pursue it you shall not engage in interstate commerce." Some of the words of the present Chief Justice in the *Employers' Liability Case,* already quoted, are worthy of requotation:

> "It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress."

A complete analogy that refutes this right of Congress is found in the fate before this Court of certain State legislation that purported to concern State affairs but in fact concerned Federal affairs: In *Western Union Telegraph Co. vs. Kansas* (216 U. S., 1), this Court considered a statute of the State of Kansas that required telegraph companies, *as a condition precedent to their right to engage in local business,* to pay into the State school fund a given percentage of their authorized capital, which represented all of their business and property everywhere. It is to be noted that this imposition of a tax was simply a condition precedent to the right of the Telegraph Company to engage in local business, and that the Telegraph Company might escape that liability by simply refraining from the conduct of local business—it was not a part of the statute to attempt to directly put any burden on interstate commerce. The validity of the tax was asserted in this Court by the argument that the matter of the right of a corporation to engage in local business in the State was dependent upon the option of the State itself, and conditioned upon the assent of the State, and, that, therefore, the State might impose such conditions as it saw fit. This argument was not to be regarded lightly, because this Court as early as *Paul vs. Virginia* (8 Wallace, 168), had said of the rights of States with respect to the local business of foreign corporations:

> "They (the States) may exclude the foreign corporation entirely; they may restrict its business in particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judg-

ment will best protect the public interest. The whole matter rests in their discretion" (p. 181),

and this Court, affirming *Paul vs. Virginia*, and in a later case, had said:

"The granting of the rights and privileges which constitute the franchises of a corporation being a matter resting entirely within the control of the legislature to be exercised in its good pleasure, it may be accompanied with any such condition as the legislature may deem most suitable to the public interests and policy. * * * As to a foreign corporation—and all corporations in States other than the State of its incorporation are deemed to be foreign corporations—it can claim a right to do business in another State to any extent only subject to the conditions imposed by its laws" (*Mining Co. vs. New York*, 143 U. S., 305, 314).

The argument in favor of the validity of the tax seemed to be strong if the form of the statute was to be regarded, because it was not a tax directly on the company's interstate business, or its privilege to engage in interstate commerce, or its property outside of the State, but the statute referred to the charge made against the corporation as a "fee" for the privilege of doing local business—a condition upon which the consent of the State to do local business was predicated. This Court however held the law invalid:

"The statutory requirement that the telegraph company shall, as a condition of its right to engage in local business in Kansas, first pay into the State school fund a given per cent. of

its authorized capital representing all its business and property everywhere, is a burden on the company's interstate commerce, and its privilege to engage in that commerce, in that it makes both such commerce conducted by the company and its property outside of the State contribute to the support of the State schools. Such is the necessary effect of the statute, and that result cannot be avoided or concealed by calling the exaction of such a per cent. of its capital stock a 'fee' for the privilege of doing local business. To hold otherwise is to allow form to control substance" (216 U. S., 1, 37).

It is said that the argument drawn from this decision is not valid in the case at bar because the Nation is superior to the State by virtue of that clause in the Constitution which provides that the Constitution itself and the laws of the United States made in pursuance thereof constitute the supreme law of the land, and that while it may not be proper for the State, though it adopts a form of legislation that makes the legislation seem valid under its reserved powers, to encroach in fact upon the power delegated to Congress, it is, nevertheless, competent for Congress under the power delegated to it, that is to regulate commerce, to override in fact the power reserved to the State. We conceive that this general statement of the supremacy of the Nation over the State is not warranted, but is wholly vicious. It is the Constitution and the Federal statutes enacted *in accordance with the Constitution* that constitute the supreme law of the land, and Federal statutes enacted otherwise than in accordance with the Constitution are not only not the supreme law of the land but not law at all.

Under our Constitution the Nation and the States are not to be weighed in the balance to ascertain any general supremacy—the Nation is supreme in the exercise of the powers delegated to it, and the States are supreme in the exercise of the powers reserved to them.

In 1870 there came to this Court the question whether an income tax levied by Congress on every profession, trade, employment or vocation could be applied to the salary of a judicial officer of the State. (*The Collector vs. Day*, 11 Wallace, 113.) It had already been decided by this Court, following the case of *McCulloch vs. Maryland*, that it was not competent for the legislature of a State to levy a tax upon the salary of an officer of the United States. (*Dobbin vs. The Commissioners of Erie Co.*, 16 Peters, 435.) The argument was made that the National Government was supreme, but this Court was not impressed with the argument and held the tax invalid. It said:

> "The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States * * *. The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff-in-error, in respect to the question before us, can-

not be maintained. The two governments are upon an equality, and the question is whether the power 'to lay and collect taxes' enables the general government to tax a salary of a judicial officer of the State, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws and which concerns the exercise of a right reserved to the states" (pp. 124, 126).

There is not involved in this argument an attack on the good faith of Congress, nor an invitation to the Court to seek for the motives of Congress in passing the statute. *McCray vs. United States* (195 U. S., 27), which upheld as constitutional a congressional enactment imposing an internal revenue tax of 10 cents per pound on oleomargarine artificially colored to look like butter, is not in any way opposed to the contention just made. The right to tax involves the right to destroy. Congress had duly levied a tax, and it was contended that the tax was void because Congress had in view in the levying of the tax some other motive than revenue, to-wit: the motive of protecting natural butter against its artificial competitor. This Court refused to go beyond the language of the statute in order to ascertain, and having ascertained, to condemn, a motive that Congress might have had in the exercise of its undoubted constitutional authority. In the present case there is no inquiry as to the motive of Congress. This argument is that Congress, by the enactment of this statute, as shown upon the face of the statute, has conceived that its authority to regulate commerce includes an au-

thority to regard the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as it may prescribe, even although the conditions would be otherwise beyond the power of Congress. Whereas the powers delegated to Congress involve no such conception; the right to engage in interstate commerce is, as has been said by this Court (*Gibbons vs. Ogden*, 9 Wheat, 1, 211), a right not conferred by the Constitution, but preceding the Constitution; the right of Congress to regulate is a right not to regulate the character or conduct of the person who engaged in the commerce, but to regulate the commerce itself to the end that it be free, untrammeled and uninjurious.

## VII.

### THE EVILS POINTED OUT AS RESULTANT FROM THE COMMERCE, TO-WIT: THE INJURY TO THE MORAL SENSE OF THE UNWITTING CONSUMER, AND THE ECONOMIC PRESSURE BROUGHT ON OTHER STATES TO RELAX THEIR CHILD LABOR LAWS, ARE NOT SERIOUS AND VALID.

Let us look now to the view taken by counsel for the defendant-appellant that seems to concede that Congress may not constitutionally interdict or restrict commerce in a given article, simply because it does not approve of the previous conduct of the one who offers it, or simply to improve, in its judgment, conditions in the State of production, but only if there is a national evil involved, or stimulated, or convenienced, in or by the commerce itself, the prevention or minimization of which is to be the justification of Congressional inhibition or re-

striction. This is an attempt to assimilate this statute to the legislation against traffic in lottery tickets, impure drugs, or diseased cattle, or against the use of interstate transportation facilities for the purpose and design of promoting prostitution.

It is conceded that the products involved are physically wholesome. It is conceded that their transportation, sale and consumption involves no injury nor jeopardy to the health, happiness or morals of any citizen, anywhere. It is conceded that carriers have no such relation to them as to make their transportation by the carrier involve the probability of unfair transportation charges operating to the injury of the shipper. It was said by the counsel for defendant-appellant, though, that:

> "The circulation in interstate commerce of products of child labor is repugnant to the moral sense of the community generally, which believes child labor to be wrong and wishes to be protected against in any wise indirectly fostering child labor by unwittingly patronizing the product thereof."

It is not once suggested that the man who consumes the product of child labor is guilty of an immoral act, as, of course, he is not. Immorality being thus eliminated, and unwholesomeness having already been eliminated, it occurs to us that this statement of a national interest is fanciful and far fetched. There is no repugnance in the moral sense of the community to interstate commerce in the products of child labor; the repugnance is to the employment of child labor—it is not the act of commerce, it is the act of manufacture, that is involved; and the act of manufacture is precisely the

act that the local authorities, the States, are entitled to regulate. Considering that, the principle being once established, Courts cannot supervise the discretion of Congress (and we have a right to consider that under the authority already cited with respect to the axiom that the right to tax involves the right to destroy, *supra*, p. 15),—let us see where we arrive if we permit so fanciful and far fetched a consideration of national interest and national evil to be the basis of Congressional prohibition of interstate commerce. It is adhorrent to many people that manufacturing processes should be carried on by underpaid hands; therefore Congress may prescribe a minimum wage scale and forbid the product of a factory in interstate commerce unless such minimum rates are paid. It is abhorrent to many people that negroes should not have the same industrial opportunities that whites enjoy; therefore Congress may provide that no factory which refuses to employ negroes, side by side with whites, may ship its goods in interstate commerce. These two illustrations are drawn from processes of manufacture of the very goods afterward shipped in interstate commerce, and their appositeness and validity cannot be denied. It is hard to distinguish between the fanciful idea of supersensitive consumers in various states advanced by plaintiff in error and the cases in which Congress should conclude that it was abhorrent to the moral sense of the community to have people engaging in interstate commerce from a State which did not permit woman suffrage, or did permit woman suffrage, or did not permit the sale of liquor, or did permit the sale of liquor.

Again, it is said:

> "That to permit the products of child labor in States which allow such labor to circulate in interstate commerce is to put economic pressure on other States to relax their laws against child labor or not to enact such laws."

It seems to us that this is a contention that begs the question. Congress has nothing to do with the minimum age at which children are to be employed in factories—it has no more to do with the conditions of labor in State A that may forbid the employment of children under the age of eighteen than it has to do with the conditions of labor in State B that may permit the employment of children down to a minimum age of thirteen. It is a perversion of the powers of Congress to prohibit the passage of goods in interstate commerce as a means of coercing labor conditions in either State A or State B, or of influencing these conditions.

The power in Congress to regulate interstate commerce was given primarily to prevent trade being interrupted by whimsical considerations or by desires of States to have their producers relieved of economic pressure. Congress may protect States against the introduction of goods from another State, the mere introduction of which may do injury to the health, morals or welfare of the citizens of the State. It may not, though, under the guise of regulation, carry that prohibition further, to protect the State (when it has not indicated that it sought such protection) and its citizens against an economic pressure, which one of the counsel for the defendant-appellant in the Court below said does not exist.

Again, economical pressure may be exerted and may be felt over a very wide field. No man desires his children to labor unless economic pressure pushes him to it. And as with parents so with communities. In order to induce absolute equality between the various States in their rules and ordinances and practices relative to labor and schools and eeleomosynary institutions you must have, not a Congressionally enforced equality of law as directly affecting these things, but an equality—which if Congressionally enforced means socialism and communism—of wealth and other economic conditions. It may be the good banking facilities in New England that enable manufacturers to get cheap money—it may be the presence in the South of negroes who do farm work and force the white laborers into factories—it may be any one of the hundred and one varying economic and domestic factors—that exerts an economic pressure on the southern parent to require the labor of his child at an earlier age than he would otherwise do, and on the southern State legislature to recognize that condition.

A cotton manufacturer in New England may be able to borrow money at not exceeding four per cent., whereas the cotton manufacturer of North Carolina may have to pay six or eight per cent. May Congress, upon the assumption that six per cent. is the proper rate for borrowed money, or that this interest discrimination against the Southern manufacturer induces his employment of children, provide against the shipment of goods in interstate commerce by a manufacturer who obtains his money at four per cent. Assuming, as many people do assume, that the unwise use of commercial fertilizer may be exhausting to the land, and that farmers in

some sections prefer less intensive farming, and a production of only twenty bushels of wheat to the acre, whereas by the free use of commercial fertilizer, even though you exhaust the land, you may have temporary crops of thirty bushels—may Congress prevent the transportation in interstate commerce of wheat grown in the intensive way, so as to avoid the economic pressure that would be brought on the old fashioned non-intensive farmer who wisely determined not to exhaust his land and not to grow but twenty bushels to the acre? The ground is too far-fetched; its suggestion smacks too much of mental gymnastics; it is not sufficiently serious and substantial to justify the sober conclusion of a court in determining the grave questions involving the allocation of powers under our form of government.

[NOTE: The brief of appellant in this Court, section 3 of argument 2 (p. 16, specially note), is suggestive of the unfortunate sectional feeling that is liable to be engendered in the constant agitation for Congressional legislation such as is involved in the present suit. It would appear from these parts of the brief that this is a fight between the New England cotton manufacturer on the one side, and the Southern cotton manufacturer on the other. New England for many years manufactured most of the cotton grown in the South, but in recent years the South is manufacturing more, and New England less, of the Southern grown cotton. It would appear that the New England opinion that this result has been brought about by the fact that the maximum hours of labor are greater, and the minimum age of children for labor lower, in the South than in New

England, was the principal reason for Congress passing this law, and is to be the principal reason for this Court upholding the validity of the law. Are we to come to a time when Congress will impose its will on the local affairs of the various States and sections at the behest of manufacturers in a given section who feel that they would be served in their competition by such legislation? It is fair to say that we did not fully conceive until we were given an inspection of the brief of appellant, the possibility of sectional discord and strife that lies in the effort to achieve such legislation, if it is to be held within the proper scope of Congressional action.

It is curious, in this connection, that the brief of appellant, having argued the matter of economic pressure as being an evil resulting from the exploitation in interstate commerce of products of child labor, cites numerous reports to demonstrate "that the employer of adult labor is not at a disadvantage with the employer of children" (p. 24), thus at the same time demonstrating the fanciful and nebular character of the evil that is said to be involved in the commerce. It is curious, moreover, to note that notwithstanding the argument on page 16, and its note, that the growth of cotton manufacturing in the Southern States in the last three decades "has been due perhaps in no small measure to the employment of child labor"—an argument that seems already refuted if the contention that is found on page 24 of the brief is sound—in Appendix B to the brief (pp. 76, 77, 79), it appears that Massachusetts, the principal cotton manufacturing

State in New England, had not brought itself to what appellant calls the "standard" by forbidding children under fourteen to work in mills, or children between the ages of fourteen and sixteen to work more than eight hours, or before 6:00 A. M., or after 7:00 P. M., until June, 1913. And yet the figures in the brief showing the tremendous increase in cotton manufacturing in the South show conditions only up to 1900. In 1900 Massachusetts neither forbade children under fourteen to work at all, nor forbade children between fourteen and sixteen to work more than eight hours a day.]

VIII.

**THIS STATUTE IS NOT ONE OF ORDINARY REGULATION OF COMMERCE OR ITS INSTRUMENTALITIES, BUT IS A USE OF THE POWER TO "REGULATE" IN ORDER TO PROHIBIT, AND THE COURT SHOULD BE ASTUTE TO SEE THAT SUCH PROHIBITION INVADES NONE OF THE RIGHTS OF THE STATE UNDER ITS RESERVED POWER, AND NONE OF THE RIGHTS OF A CITIZEN SECURED TO HIM BY THE FIFTH AMENDMENT.**

Undoubtedly an ordinary regulation of the activities; for instance, of an interstate carrier, may be made by Congress, even though such incidentally affects intrastate transactions of the carrier.

> "Its (Congress) authority extending to these interstate carriers as instrumentalities of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial rela-

tion to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance. * * * Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the nation, would be supreme within the national field" (*Railway vs. United States*, 234 U. S., 342, 351-352).

This is a reasonably incidental and necessary encroachment upon what would otherwise be the reserved power of the State, because it is necessary, for the complete exercise of the delegated authority, to regulate interstate commerce. It has found illustration in various cases, as for instance, the invalidation of an existing contract for the payment of interstate transportation charges with advertising, in order to make the Congressional regulation of rates and forbidding rebates effective (*Railway vs. United States*, 219 U. S., 486). So, also, in the regulation by Congress of hours of labor and rules of liability for accidental injury on interstate carriers: This Court having held (*Employers' Liability Cases*, 207 U. S., 463) that a law was unconstitutional which established a rule of liability as to all employees of the interstate carrier, even those not engaged in interstate traffic; Con-

gress passed a subsequent statute limiting the effect of the statute to employees engaged in interstate commerce, and this Court held that this last law was valid, although, under the necessity of the situation, the interstate and intrastate operations of the interstate carriers were so interwoven that it was utterly impracticable for the carriers to divide their employees in such manner that the duties of those who were engaged in connection with interstate commerce shall be confined to that commerce exclusively, and held the statute valid (*Railroad vs. Interstate Commerce Commission,* 221 U. S., 612, 618). All this is very different from holding that Congress has the right to prohibit the transportation of an article as a part of the regulation of interstate trade when, as shown by the Act itself, the sole effect of the Act is to change conditions in manufacture—manufacture and its processes and control forming no part of, but being distinct from, and antecedent to, commerce.

This Court has indicated very definitely its indisposition to sanction an Act of Congress that forbids the transportation of a harmless article, even in circumstances when such transportation was closely tied up with the matter of the conduct of the great railroads, interstate carriers: This Court had held that a carrier could not frustrate the statute of Congress, providing for uniformity of rates, by making a contract to sell certain goods and to transport the goods in completion of the contract, when the stipulated price to be paid by the buyer, consignee, did not represent the cost of purchase, the cost of delivery, and the published freight rates (*New Haven Road vs. Interstate Commerce Commission,* 200 U. S., 361). There-

after Congress passed the so-called "Commodities Clause," which provided that it should be unlawful for any railroad company to carry, in interstate commerce, any article or commodity (other than certain excepted articles) manufactured, mined, or produced by it or under its authority or which it may own in whole or in part, or in which it may have any interest, direct or indirect. The validity of this Commodities Clause was attacked by certain railroad companies, and the Circuit Court, Judge Gray writing the opinion, held the Act was unconstitutional, although, of course, the statute had a direct relation to the rates of carriers in interstate commerce, which is, of course, a matter properly within the scope of Congressional regulation.

Argument was made on behalf of the Government in support of that statute, quite like the argument that has been made in the case at bar, including the contention that the right to regulate interstate commerce, having been conferred in the same paragraph that conferred the right to regulate commerce with foreign nations, is just as broad and unlimited. The Court did not agree with this:

> "All the argumentation of counsel for the Government, in support of the validity of this legislation, would be equally applicable to any assertion of the power of Congress to regulate commerce, however arbitrary it might be, or to whatever extent, by prohibition or otherwise, it might affect the liberty or property of the citizen. If, as the Attorney-General contends, the power of Congress to prohibit interstate commerce is as absolute as that exercised over foreign commerce in the embargo and non-intercourse acts, Congress may, for any reason

or no reason, prohibit, in whole or in part, the interstate transportation of necessary and harmless commodities and restrain the liberty of the citizens of the several States, or of certain classes of them, from engaging in interstate commerce therein. If the propositions laid down by the Attorney-General are sound, it is hard to conceive upon what ground legislation could be challenged which arbitrarily prohibited farmers from carrying their own corn, by their own teams, to market across the boundary line between their own and another State. Such a power would be a mockery of the purposes for which the Constitution was formed, and destroy that freedom of interstate trade which it was intended to secure" (*United States vs. Delaware & Hudson Co.*, 164 Fed., 215, 238).

That case came to this Court, and was decided in an opinion written by the present Chief Justice (*United States vs. Delaware & Hudson Co.*, 213 U. S., 366). This Court held that it would not give effect to the words "manufactured, mined or produced by it" in the statute which forbade the transportation by a railroad company of "commodities mined, manufactured or produced by it, nor which it may own in whole or in part," but would give effect only to that part of the statute which prohibited the transportation by a railroad of commodities at the time owned in whole or in part by it. Under this construction of the statute it was held constitutional, under the *New Haven Case, supra,* because of the impracticability of any practical and accurate adjustment or harmonizing of rates when the carrier was at the same time the carrier and the shipper. This construction, which,

of course, was not a natural or easy construction, was adopted by this Court, professedly to avoid the difficult constitutional questions that any other construction would have involved:

> "It is clear that the two prohibitions which relate to manufacturing, mining, etc., and the ownership resulting therefrom, are, if literally construed, not confined to the time when a carrier transports the commodities with which the prohibitions are concerned, and hence the prohibitions attach and operate upon the right to transport the commodity because of the antecedent acts of manufacture, mining or production. * * * It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity."

Now, what were the constitutional questions that even in this case, and having to do with the subject, to-wit: adjustment of rates, over which the authority of Congress is unquestioned, induced this Court to refuse to give a literal construction of the statute? They were set forth in this language:

> "If the contentions of the Government as to the meaning of the Commodities Clause be well founded, at least a majority of the Court are of the opinion that we may not avoid determining the following grave constitutional question:

"1. Whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production or ownership of an article or commodity, not because of some inherent quality of the commodity, but simply because it may become the subject of interstate commerce.

"2. If the right to regulate commerce does not thus extend, can it be impliedly made to embrace subjects which it does not control, by forbidding a railroad company engaged in interstate commerce from carrying lawful articles or commodities because, at some time prior to the transportation, it had manufactured, mined, produced or owned them, etc." (p. 406).

It is to be noted as having to do with the form of statutes, that the statute being considered in this *Delaware & Hudson Case,* the *Commodities Clause Case,* was definitely regulative of commerce:

"* * * It shall be unlawful for any railroad company to transport from any State * * * any article * * * manufactured, mined or produced by it."

Yet this Court said that if the words "manufactured, mined or produced by it" were to be given their ordinary construction, as contended by the Government, there would be involved the grave constitutional question whether Congress had "authority to control or prohibit mining, manufacturing, etc." By virtue of that authority, we say that the present statute on its very face asserts an attempt to exercise an authority to control or

prohibit manufacturing—not as reasonably incidental to the regulation of the rights or the conduct of an interstate carrier, but simply and solely to effect a police purpose. With these added circumstances we cannot conceive that the constitutional question reserved in the *Commodities Clause Case* by this Court, may be resolved otherwise than against the Congressional authority in the case at bar.

## IX.

### THE OPINION OF LEADING AND THOUGHTFUL TEXT-BOOK WRITERS, LAWYERS AND PUBLICISTS, WHOSE OPINIONS IN A CASE OF THIS SORT ARE, AND OUGHT TO BE, INFLUENTIAL, ARE AGAINST THE CONSTITUTIONALITY OF THIS STATUTE.

There is a presumption that the Congress that enacted the statute believed in its constitutionality—a presumption that would not be met by the citation of the debates in House and Senate that showed the conviction of many opponents to the Bill that the law when enacted would be unconstitutional, and simply the hope of many who favored the Bill that this Court would desire it constitutional. We deem it not improper to say what was very well, and perhaps entirely correctly said, by the proponents of this Bill in Committee, to wit: that the attitude of the member of Congress who is face to face with the question of the constitutionality of a proposed enactment is that if his doubts as to its constitutionality are to determine him against the passage of a proposed bill, there will be no progress in legislation, and that if this degree of scrupulousness as to the constitutionality of every measure brought

before Congress had been applied by Congressmen, there would be absent from the statute books much desirable legislation that is now there.

In 1907, a Bill was introduced into the Senate of the United States that forbade carriers in interstate commerce accepting for interstate carriage goods produced by child labor, with standards prescribed of maximum hours of labor, and minimum age. This Bill excited considerable attention and discussion. A resolution was introduced in the House of Representatives directing the then Judiciary Committee to investigate and report:

> "The extent of the jurisdiction and authority of Congress over the subject of woman and child labor, and to what extent and by what means Congress has authority to suppress abuses of such labor or to ameliorate conditions surrounding the employment of such laborers."

The Judiciary Committee of the House had in 1907, as now, eminent lawyers upon it, and it reviewed the authorities delivered by this Court up to that time, having in mind the Senate Bill, and the possibility of authority under the Interstate Commerce Clause, and answered:

> "In the opinion of your committee, there is no question as to the entire want of power on the part of Congress to exercise jurisdiction and authority over the subject of woman and child labor. In fact it is not a debatable question. It would be a reflection upon the intelligence of Congress to so legislate. It would be casting an unwelcome burden upon the Supreme Court to so legislate. The agitation of

such legislation produces an uneasy feeling among the people and confuses the average mind as to the power of Congress and the power of the States. The lives, health, and property of the women and children engaged in labor is exclusively within the power of the States, originally and always belonging to the States, not surrendered by them in Congress. Such is the emphatic language of the Supreme Court. If a question of good order and morals, it is the same. The argument has long since been made by others, and the committee can not add to it. The assertion of such power by Congress would destroy every vestige of State authority, obliterate State lines, nullify the great work of the framers of the Constitution, and leave the State governments mere matters of form, devoid of power, and ought to more than satisfy the fondest dreams of those favoring centralization of power." (*59th Congress, 2d Session, Report No. 7304*, p. 8.)

It is not to be forgotten that this opinion of the Judiciary Committee was in 1907, and the decision of this Court in the *Lottery Case* (*supra*), which forms the real basis for the contention that this law is valid, was delivered in 1902.

"If Congress can regulate a manufacturing business situated wholly within a State upon a theory that its products when complete are sold in other States and in foreign countries, and thereby become subjects of interstate commerce, it can, upon principle, regulate the raising of every cereal in the United States. Every agricultural product would become an article of interstate commerce and during its growth

would be subject to the regulation of Congress. If it had the power to regulate the manufacture of an article made wholly within a State and the power to regulate the raising of a crop, why would it not have the power to appoint superintendents to see that the manufacturing and raising were properly conducted? The extent to which this doctrine might be carried under this clause, if it once obtained a recognition by our highest judicial tribunal would accomplish more toward overthrowing the principle of 'home rule' and 'local self government' than any construction ever given any clause of the Constitution." *Watson on the Constitution, vol. 1, page 522.*

"In regulating commerce, Congress regulates traffic in things, vehicles of transport and things *in transitu,* but not the things themselves. Before and after the *transitus,* they are beyond this power of regulation. The production and use of things in the *terminus a quo* and the *terminus ad quem* are not subjects of the commercial power, but of the state from which and to which they are transported. *2 Tucker, U. S. Const., 526.*"

We are about to cite three other great Constitutional lawyers, not because they, and each of them, had at the time of the expression of such opinion, or has since achieved, eminence and pre-eminence in their fields, but simply because each, at the time of the expression was, and still is, without respect to political position then or theretofore or thereafter achieved, a thoughtful and patriotic student of the Federal Constitution. The first two in their references to child labor legislation, evidently referred to the Senate Bill introduced in 1907, which was

in form definitely a regulation of interstate commerce, for it simply forbade carriers to accept certain goods for interstate carriage. In his compilation of "Lectures on Popular Government," published in 1913, President TAFT said:

> "The distinction between the power exercised in enacting the pure food bill and that which would have been necessary in the case of the child labor bill is that Congress in the former is only preventing interstate commerce from being a vehicle for conveyance of something which would be injurious to people at its destination, and it might properly decline to permit the use of interstate commerce for that detrimental result. In the latter case Congress would be using its regulative power of interstate commerce not to effect any result of interstate commerce. Articles made by child labor are presumably as good and useful as articles made by adults * * *. Child labor in the State of the shipment has no legitimate or germane relation to the interstate commerce of which the goods thus made are to form a part, to its character or to its effect. Such an attempt of Congress to use its power of regulating such commerce to suppress the use of child labor in the State of shipment would be a clear usurpation of that State's rights" (pp. 142, 143).

President WILSON, then President of Princeton University, in his book on "Constitutional Government in the United States," published in 1908, said:

> "Its power (the power of Congress) is 'to regulate commerce between the states,' and

the attempts now made during every session of Congress to carry the implications of that power beyond the utmost boundaries of reasonable and honest inference show that the only limits likely to be observed by politicians are those set by the good sense and conservative temper of the country. The proposed federal legislation with regard to the regulation of child labor affords a striking example. If the power to regulate commerce between the States can be stretched to include the regulation of labor in mills and factories it can be made to embrace every particular of the industrial organization and action of the country. The only limitations Congress would observe, should the Supreme Court assent to such obviously absurd extravagancies of interpretation, would be the limitations of opinion and of circumstance" (pp. 178-179).

"May it (Congress) also regulate the conditions under which the merchandise is produced which is presently to become the subject matter of interstate commerce? May it regulate the conditions of labor in field and factory? Clearly not, I should say; and I should think that any thoughtful lawyer who felt himself at liberty to be frank would agree with me. For that would destroy all lines of division between the field of State legislation and the field of Federal legislation. Back of the conditions of labor in the field and in the factory lie all the intimate matters of morals and of domestic and business relationship which have always been recognized as the undisputed field of State law; and these conditions that lie back of labor

may easily be shown to have their part in determining the character and efficiency of commerce between the States" (*Ibid*, pp. 170-171).

In 1915, Senator ELIHU ROOT, in his Princeton Lectures on the Constitution, gave significant expression to the evils involved in the condition in which the only limitations on Congressional action were the limitations of opinion and of circumstance and when the usurpation of the States' rights were complete:

> "On the other hand, if the power of the Nation would override that of the States and usurp their functions, we should have this vast country, with its great population, inhabiting widely separated regions, differing in climate, in production, in industrial and social interests and ideas, governed in all its local affairs by one all-powerful central government at Washington, imposing upon the home life and behavior of each community the opinions and ideas of propriety of distant majorities. Not only would this be intolerable and alien to the idea of free self-government, but it would be beyond the power of a central government to do directly. Decentralization would be made necessary by the mass of government business to be transacted, and so our separate localities would come to be governed by delegated authorities—by proconsuls authorized from Washington to execute the will of the great majority of the whole people. No one can doubt that this also would lead by its different routes to the separation of our Union. Preservation of our dual system of government, carefully restrained in each of its parts by the limitations

> of the Constitution, has made possible our growth in local self-government and national power in the past and, so far as we can see, it is essential to the continuance of that government in the future."

It is to be noted that the statute now being considered has some of the features visualized in this quotation from Senator Root—the agents of the Department of Labor going into every town and village of the State with rules for proof of birth, well recognized in certain sections, and utterly unknown in others; the suspicions as to the reliability of parents' statements; and the espionage from a central authority,—all added to the proper regulative machinery of the State itself,—would become intolerable.

## X.

**PLAINTIFFS HEREIN, DEFENDANTS IN ERROR, IF INDEED THE ACT OF CONGRESS WAS NOT A PROPER EXERCISE OF THE POWER DELEGATED TO CONGRESS BY THE CONSTITUTION, ARE PROTECTED AGAINST INJURY IN THEIR LIVES, LIBERTY, PROPERTY, OR OTHERWISE, BY THE ENFORCEMENT OF THE STATUTE.—DISCUSSION OF TENTH AND FIFTH AMENDMENTS.**

It is the argument of appellees herein that the statute, by the enforcement of which they are about to be deprived of an undoubted property right, is a void statute. In order to maintain that contention, it is not necessary for them to point to an article of the Constitution of the United States or its Amendments that was primarily violated by Congress in

the enactment of the statute. Congress and the Federal Government have only delegated powers, and the principal question presented here is whether the statute is in accordance with, and within the terms of, a delegated power. If it is not within a delegated power, it is unconstitutional and invalid, and plaintiffs-appellees are about to be deprived of a property right in their labor when they are doing precisely as permitted by the laws of the State of their residence with respect to matters about which the State of their residence is the sole competent legislator.

It is perfectly true, of course, that the Tenth Amendment to the Constitution of the United States which declares that the powers not delegated are reserved to the States respectively or to the people, does not detract, nor subtract, from the powers delegated. It remains true, though, that an act of Congress that goes beyond the powers delegated encroaches upon the powers reserved to the States or to the people, and in that sense is in violation of the Tenth Amendment to the Constitution of the United States.

The Fifth Amendment to the Constitution of the United States protects the individual in the enjoyment of his life, liberty and property by forbidding Congress to deprive him of life, liberty or property without due process of law. Undoubtedly this due process amendment has had its principal function in the protection of the individual against the exercise of a power, delegated by the Constitution, it is true, but exercised in the particular instance otherwise than in accordance with "those fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions"—or otherwise than "in accordance with the nature

of the Federal State." Yet that that is not the only force of the Fifth Amendment has been declared by this Court. This Court, in *In re Kemmler* (136 U. S., 436), in comparing the Fifth Amendment affecting Federal legislation, and the Fourteenth Amendment affecting State legislation, said that the due process of law in the Fifth Amendment referred to—

> "That law of the land which derives its authority from the legislative powers conferred on Congress by the Constitution of the United States *exercised within the limits therein prescribed* and interpreted according to principles of the common law" (*Italics ours*).

It is the conception of the plaintiffs-appellees, that the enforcement of any Congressional enactment to the injury of their property when this Congressional enactment is void because not within the powers delegated to Congress, constitutes a taking of their property without due process of law, and therefore is in contravention of the Fifth Amendment.

For a State to limit the hours in which children shall work, or fix the minimum age at which they shall work, or fix the physical conditions in which they shall work, does not violate the fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions; but for the Federal Government to attempt to create a privileged class of citizens of the States who may engage in interstate commerce, or whose products may be embarked in interstate commerce, involving, as this does, the creation of another class, of whose conduct Congress does not approve, which is denied

these privileges, is beyond the limits of the fundamental principles of liberty and justice, and not in accordance with the nature of the Federal State.

It is difficult for us to be sure that we conceive the argument of appellant in this aspect. We understand,—however we may disagree with,—the contention that this statute is to be deemed a valid regulation of interstate commerce, and as such within the power delegated to Congress to regulate interstate commerce. Is it meant, as one of the counsel for the defendant-appellant in the Court below seemed to argue, that even assuming that the statute is not within the authority of Congress under its power to regulate interstate commerce, it is nevertheless to be effective in controlling the affairs of citizens just as if it were within such delegated powers? If our institutions mean anything, and our Constitution is more than a scrap of paper, the statement of that suggestion carries its own refutation.

## XI.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED.

April 5, 1918.

MORGAN J. O'BRIEN,
CLEMENT MANLY,
W. P. BYNUM,
JUNIUS PARKER,
W. M. HENDREN,
Counsel for Appellees.

# HAMMER, UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA, v. DAGENHART ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

No. 701. Argued April 15, 16, 1918.—Decided June 3, 1918.

The Act of September 1, 1916, c. 432, 39 Stat. 675, prohibits transportation in interstate commerce of goods made at a factory in which, within thirty days prior to their removal therefrom, children under the age of 14 years have been employed or permitted to work, or children between the ages of 14 and 16 years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 P. M. or before the hour of 6 A. M. *Held*, unconstitutional as exceeding the commerce power of Congress and invading the powers reserved to the States.

The power to regulate interstate commerce is the power to prescribe the rule by which the commerce is to be governed; in other words, to control the means by which it is carried on.

The court has never sustained a right to exclude save in cases where the character of the particular things excluded was such as to bring them peculiarly within the governmental authority of the State or Nation and render their exclusion, in effect, but a regulation of interstate transportation, necessary to prevent the accomplishment, through that means of the evils inherent in them.

The manufacture of goods is not commerce, nor do the facts that they are intended for, and are afterwards shipped in, interstate commerce make their production a part of that commerce subject to the control of Congress.

The power to regulate interstate commerce was not intended as a means of enabling Congress to equalize the economic conditions in the States for the prevention of unfair competition among them, by forbidding the interstate transportation of goods made under conditions which Congress deems productive of unfairness.

It was not intended as an authority to Congress to control the States in the exercise of their police power over local trade and manufacture, always existing and expressly reserved to them by the Tenth Amendment.

Affirmed.

THE case is stated in the opinion.

*The Solicitor General*, with whom *Mr. Assistant Attorney General Frierson* and *Mr. Robert Szold* were on the brief, for appellant.

[The Government supported its argument upon the history and physical and economic effects of child labor by voluminous references to reports and debates in Congress and other public documents, including those bearing direct relation to the act in question.]

Unquestionably the power conferred by the commerce clause embraced all which the States had previously enjoyed over the subject, and "the power of a sovereign State over commerce, therefore, amounts to nothing more than a power to limit and restrain it at pleasure." *Gibbons* v. *Ogden*, 9 Wheat. 1, 227. While doubt has existed as to how far back Congress may reach prior to the actual start of the interstate journey (*Coe* v. *Errol*, 116 U. S. 517; *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Louve* v. *Lawler*, 208 U. S. 274), and how far forward after the journey has ceased (*Brown* v. *Maryland*, 12 Wheat. 419; *McDermott* v. *Wisconsin*, 228 U. S. 115), it has never been doubted that when the actual transportation begins the jurisdiction of Congress at once attaches.

The act is upon its face a regulation. To regulate is "to prescribe the rule by which commerce is to be governed" (*Gibbons* v. *Ogden*, 9 Wheat. 1, 196); "to foster, protect, control and restrain" (*Second Employers' Liability Cases*, 223 U. S. 1, 47). One form of such regulation is prohibition. *In re Rahrer*, 140 U. S. 545; *Lottery Case*, 188 U. S. 321; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *United States* v. *Lexington Mill & Elevator Co.*, 232 U. S. 399; *Hoke* v. *United States*, 227 U. S. 308; *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311; *Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510. Indeed, the denial of the facilities of interstate

transportation to specified articles in terms precisely like those now in question has become a familiar and a customary method of regulation. [Citing numerous acts of Congress.]

The substantial connection between the regulation and the actual interstate movement (*Adair* v. *United States*, 208 U. S. 161) is not questioned in this case. The statute carefully avoids the difficulties in the first *Employers' Liability Cases*, 207 U. S. 463, by not applying to that commerce which is wholly within one State.

It sharply distinguishes between the manufacture, which lies wholly within one State, and the interstate movement. No prohibitions are extended to manufacturers of goods as such, although they may intend subsequently to ship in interstate commerce. *United States* v. *E. C. Knight Co.*, 156 U. S. 1. A manufacturer may, notwithstanding the act, employ such children as he pleases. The law springs into activity only when actual transportation to another State begins.

It cannot be denied that a change in public opinion regarding child labor has occurred like that in relation to lottery tickets. Neither the ticket nor the labor is inherently bad, but the facts of life have disclosed undeniable evils in the use of both. With the growth of industrial activity in the latter part of the nineteenth century the far-reaching effects of the employment of children in factories became manifest. The dangers to persons of tender years in working about machinery are apparent to everyone. But the evil effects on the child's physical well-being were shown by medical science to be not confined to the so-called dangerous occupations. Night work and excessive hours of labor indoors in factories at a critical stage in the development of the child's body stunt the physique and decrease the resistance to disease. The child worker becomes dwarfed in body and mind, and the State

is deprived of that vigorous citizenship upon which the success of democracy must depend.

The legislation of the States on the subject was not uniform, and many States were without the provisions which came to be regarded as the standard necessary for the public protection. Interstate commerce is not a technical legal conception but a practical one, drawn from the course of business. *Swift v. United States*, 196 U. S. 375, 398. In the day of steam and electricity the play of the forces of competition makes the cause operating in one State immediately felt in another. The slightest difference in the cost of production, or what amounts to the same thing, a belief on the part of manufacturers in the existence of such difference, alters the development of an industry. As the conviction grew that the employment of child labor was morally repugnant and socially unwise, it came to be regarded also in the light of unfair competition in trade among the States. The State authorizing the use of such labor in products shipped into other States was thought unfairly to discriminate against the citizens of the latter. Citizens in the States in which child labor products were introduced through interstate commerce were made unwilling parties to practices deemed immoral. The health of children in competing States was injuriously affected by the interstate transportation of child-made goods. Thus, if one State desired to limit the employment of children, it was met with the objection that its manufacturers could not compete with manufacturers of a neighboring State which imposed no such limitation. The shipment of goods in interstate commerce by the latter, therefore, operates to deter the former from enacting laws it would otherwise enact for the protection of its own children.

The manufacturers' argument is based upon the belief that child labor is cheaper. There is much reason for thinking this belief mistaken; but the facts of their com-

mon belief in it, of their insistent arguments before state legislatures, and of the resultant effect in postponing or relaxing state legislation with reference to child labor, can not be denied.

The effect on one community of the importation from another of the products of cheap labor has been recognized by Congress in dealing with foreign commerce. It has prohibited the importation from foreign countries of convict-made goods. This exclusion was not designed to prohibit convict labor in foreign countries, but to prevent the lowering of standards in this country. The theory of much of our tariff legislation and of the Alien Contract Labor Law is the same.

The effect of low child labor standards in one State upon health in competing States is due entirely to the interstate character of the commerce in question. Because this is so a State can not protect itself. A state law forbidding entrance into the State of goods made by children of an age lower than that at which the State itself permits young persons to work would perhaps be valid in the absence of congressional legislation. *Asbell* v. *Kansas*, 209 U. S. 251; *Reid* v. *Colorado*, 187 U. S. 137; but see *Leisy* v. *Hardin*, 135 U. S. 100; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1. But such a law would not be adequate, for the effects of the competition would be felt when goods from the competing States met in other States or at the ports for foreign exportation (the present law as enacted, therefore, includes a prohibition against shipment in foreign as well as domestic commerce). The conviction became gradually settled that the situation called for the exercise by Congress of its power to prescribe a uniform rule for the conduct of interstate commerce. Congress had thoroughly investigated the subject.

The act does not contravene the Fifth Amendment. The due process clause in that Amendment limits Congress

precisely as the same clause in the Fourteenth Amendment limits the State. *Lottery Case*, 188 U. S. 321, 356, 357; *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, 320, 332; *Twining* v. *New Jersey*, 211 U. S. 78, 100, 101. If therefore a State, notwithstanding the Fourteenth Amendment, may bar the facilities of intrastate commerce to goods made by children in factories, Congress may do likewise, so far as the Fifth Amendment is concerned, for interstate commerce. Prohibition of all intrastate commerce in child labor by a State clearly does not contravene the due process clause of the Fourteenth Amendment. *Sturges & Burn Mfg. Co.* v. *Beauchamp*, 231 U. S. 320; *People* v. *Ewer*, 141 N. Y. 129; *State* v. *Shorey*, 48 Oregon, 396; *Starnes* v. *Albion Mfg. Co.*, 147 N. Car. 556; *In re Weber*, 149 California, 392; *In re Spencer*, 149 California, 396; *Inland Steel Co.* v. *Yedinak*, 172 Indiana, 423; *State* v. *Rose*, 125 Louisiana, 462. Note also the cases in this court upholding statutes limiting the hours of labor for men and women.

There is no right to use the channels of interstate commerce to affect injuriously the health of the people in competing States; nor to consummate the injury to the producing child; nor in unfair competition.

The act is a legitimate exercise of legislative power for the protection of the public health. It is now settled that regulations of interstate commerce may have the quality of police measures. *Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510, 515; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 215. See also *Hoke* v. *United States*, 227 U. S. 308, 323; *Wilson* v. *United States*, 232 U. S. 563, 567; *Caminetti* v. *United States*, 242 U. S. 470, 492.

The act is reasonably calculated to protect the health of children in States competing with the point of origin. The shipment of child-made goods outside of one State directly induces similar employment of children in com-

peting States. It is not enough to answer that each State theoretically may regulate conditions of manufacturing within its own borders. As Congress saw the situation, the States were not entirely free agents. For salutary statutes had been repealed, legislative action on their part had been defeated and postponed time and again, solely by reason of the argument (valid or not) that interstate competition could not be withstood.

The act also protects the health of children in the producing State. The Fifth Amendment imposes no obstacle to the denial by Congress of facilities of interstate transit for the prevention of injury to children in the shipping State. Congress can outlaw such goods to prevent pollution of the interstate stream.

That the articles excluded are themselves innocuous is immaterial. *United States* v. *American Tobacco Co.*, 221 U. S. 106, 132. Discussion of the inherent badness of things is largely futile. How do we judge of goodness or badness except by their effect? Those things which work ill effects when transported across state lines are for that reason evil. The transportation of products of child labor, therefore, can not be classed as innocuous in fact.

As a matter of law, the regulating power is not limited to goods harmful *per se*. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *Weeks* v. *United States*, 245 U. S. 618; *Wilson* v. *United States*, 232 U. S. 563; *Athanasaw* v. *United States*, 227 U. S. 326; *Compagnie Francaise* v. *Louisiana Board of Health*, 186 U. S. 380; *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342; *Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510. Liquor, lottery tickets, and misbranded food were legitimate objects until the legislature made them outlaws.

Congress acted reasonably in putting child-made goods in the same class.

A seller's liberty is not unduly restrained by protecting a purchaser from becoming an unwilling party to an in-

moral sale. *Plumley* v. *Massachusetts*, 155 U. S. 461; *United States* v. *Coca Cola Co.*, 241 U. S. 265, 285.

There is no right to use the channels of interstate commerce for unfair competition. Large authority was exercised in removing unfair discrimination as a means of competition in the Act to Regulate Commerce, and the Clayton Anti-Trust and Federal Trade Commission Acts. Industry and business are the controlling considerations. Sales detrimental to a state industry may be prohibited by a State. *Sligh* v. *Kirkwood*, 237 U. S. 52. In interstate commerce discretion is intrusted to Congress to determine which of the various business elements of the Nation is entitled to protection. An example of a prohibition of interstate trade for industrial reasons is in the quarantine of cattle fit enough for food in themselves but likely to damage the cattle industry in the receiving State. *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613, 623.

Congress believed that it was exercising in this case its power to forbid competition deemed unfair. Senate Report No. 358, 64th Cong., 1st sess.; House Report No. 46, 64th Cong., 1st sess. It was not fanciful to class shipment of child-made goods as unfair competition. Fraud and deceit are recognized acts of unfairness. An advantage derived by drawing on the blood of children is also immoral, according to the consensus of modern thought. Nor is immorality alone the test of unfair competition. An act unreasonably interfering with another's right to pursue trade, such as local price cutting, or hiring away of workmen, constitutes unfairness. Congress may well have thought that child labor deserved a like reprobation.

The extension of the prohibition to all products of the factory in which the child labors is a reasonable provision for the due enforcement of the act.

Assuming that the act does not contravene the Fifth

Amendment, there is no other clause of the Constitution to which it is obnoxious. *The Lottery Case*, 188 U. S. 321, 357.

To urge the reserved powers of the States is to beg the question. The reserved powers of the States do not begin until the power of Congress leaves off. [Instancing numerous cases in which exercises of the commerce power have been upheld though necessarily affecting state policy and control as to local matters; and numerous acts of Congress having such effect.]

There is no encroachment upon the reserved powers of the States. As said by Mr. Justice McKenna in *Hoke* v. *United States*, 227 U. S. 308, 320, "The power of Congress under the commerce clause of the Constitution is the ultimate determining question. If the statute be a valid exercise of that power, how it may affect persons or States is not material to be considered."

The Constitution grants to Congress no more power over the public in the receiving than in the shipping State. Neither is mentioned. It is the public, wherever situated, that is entitled to protection.

The argument that the evil is complete prior to the interstate movement is fallacious, for Congress enacted the statute to protect citizens outside of the shipping State.

Congress was attempting to regulate commerce in good faith and not to do indirectly what it could not do directly. It sought only to prevent the evil resulting from the interstate transportation of child-made goods. The court is confined to the purpose as expressed in the act. *McCray* v. *United States*, 195 U. S. 27. Nor is it concerned with questions of the wisdom, expediency, or oppressive character of legislation. *Id.*

*Mr. Maryan J. O'Brien* and *Mr. W. M. Hendren*, with whom *Mr. Clement Manly*, *Mr. W. P. Bynum* and *Mr. Junius Parker* were on the brief, for appellees:

If the transaction or conduct is not within the grant of power to Congress, it lies within the controlling power of the State in the exercise of the police power. 10th Amendment; *Martin* v. *Hunter*, 1 Wheat. 304, 326; *House* v. *Mayes*, 219 U. S. 270, 281–282; *New York* v. *Miln*, 11 Pet. 102.

The only suggested source of authority to legislate on the subject of the act is the Commerce Clause, which Madison said (3 Farrand, Records of Federal Constitution) "was intended as a negative and preventive provision against injustice in the states themselves, rather than as a power to be used for the positive purposes of the general government."

Is the act a regulation of commerce in the constitutional sense? Or is it a regulation of some one of the many internal affairs of the States which Congress is not empowered to deal with? *United States* v. *De Witt*, 9 Wall. 41; *United States* v. *E. C. Knight Co.*, 156 U. S. 1; *Employers' Liability Cases*, 207 U. S. 463, 502. A regulation of "all of these delicate, multiform and vital interests—interests which in their nature are, and must be, local in all the details of their successful management." *Kidd* v. *Pearson*, 121 U. S. 1, 21. The right of intercourse between the States has its source in the municipal law. The Constitution found it "an existing right and gave to Congress the right to regulate it," which is the right to prescribe the rule by which commerce is to be governed. *Gibbons* v. *Ogden*, 9 Wheat. 1, 211. With respect to his lawful goods, the citizen exercises a right. With respect to his unlawful goods, he enjoys a privilege, which Congress may withhold largely as it pleases.

While the power to regulate commerce among the several States is in the same grant and in the same terms with the power over foreign commerce, yet there is a difference with respect to the extent of that power growing out of the difference in the relation of the United

States to the two kinds of commerce, and the difference in the right of the citizen of the United States and the foreigner to engage therein. As to foreign commerce, the United States possesses and exercises all the attributes of sovereignty. As to interstate commerce, it exercises only that portion of sovereignty delegated to it. Prentice & Eagan, Commerce Clause of the Federal Constitution, 37–42; Judson on Interstate Commerce, Par. 2; 2 Tucker on the Constitution, Pars. 255, 256. This is illustrated in the plenary power of Congress over territory belonging to the United States and outside the boundaries of a State of the Union. The foreigner enjoys a privilege. The citizen exercises a right, subject only to that measure of interference to which he has consented.

It appears from the act itself: (1) That the articles made by children are in no way different from articles made by others. (2) That the purpose and effect of the act is to prevent the employment of children, and not to safeguard or promote commerce or the interests of persons or communities in the States into which child-made goods might be sent. That such is the purpose and expected effect, was avowed in the debates upon the floor of Congress, and before the committees to which the bill was referred.

The act itself shows the harmless quality of the goods. Articles heretofore barred and dealt with by this court have been such as could fairly be said to be "outlaws of commerce"; consequently all persons have been forbidden to ship them; the article itself is barred from commerce.

Does the power to regulate commerce extend to and include the power to prohibit harmless and useful commodities because of pre-commerce conditions of labor?

However much the *Knight Case*, 156 U. S. 1, may be weakened by later decisions, its distinction between production and commerce is still effective to prevent

direct congressional regulation of production as distinguished from sale and transportation.

It is not necessary to resort to the Fifth Amendment. But, if so, the grant of power in the Commerce Clause can not, in the guise of regulation, by a mere pretense of exercising this power, extend to the destruction of property interests only remotely related to commerce.

In regulating commerce, Congress regulates traffic in things, vehicles of transport and things *in transitu*, but not the things themselves. Before and after the *transitus*, they are beyond this power of regulation. The production and use of things in the *terminus a quo* and the *terminus ad quem* are not subjects of the commercial power, but of the State from which and to which they are transported. 2 Tucker, Const. 526.

The conditions reached and controlled by this act are subject only to that attribute of sovereignty called the "police power." With relation to matters of National import, has Congress all the attributes of sovereignty, or merely those surrendered to it by the people and not reserved to the States? Save in the instances provided therein the Fourteenth Amendment does not entrench upon the state police power. *Barbier* v. *Connolly*, 113 U. S. 21, 31. Is the only protection and security for the sovereignty and freedom of conduct sought to be reserved by the Tenth Amendment the limitation imposed upon Congress by the Fifth Amendment with respect to arbitrary action? Are not the rights so many and so vital and essential to the prosperity of the citizen and consequently of the Nation, as to indicate that their protection is entitled to and has a more fundamental basis, that is, that they have not been given over to the chance of arbitrary action?

The *Keller Case*, 213 U. S. 114, holds an act of Congress void, punishing harboring within a State an alien prostitute, as a regulation of a matter within the police

power reserved to the State. The power of Congress to regulate commerce among the States is not then the equivalent of the reserved police power of the States.

Congress has no general police power; it may exercise a police power only over a subject-matter already under its jurisdiction, by virtue of some authority delegated to it by the Constitution. In other words, a police purpose may be the reason for exercising a power possessed, but it is not a source of power. *Jacobson* v. *Massachusetts*, 197 U. S. 11; *Sherlock* v. *Alling*, 93 U. S. 99; 12 Corpus Juris, 910.

To uphold the act upon the theory of police power it must be clear that interstate commerce is menaced and not something else outside that domain.

Whatever menace there is in child labor has a locality. It cannot reasonably and fairly be said that the product of the factory where children are employed is so tainted by its origin that during or after transportation it constitutes a menace to health or morals or to any other subject within the domain of Congress. The menace, if it exists, is confined to where the child is employed. In invoking the police power, Congress is operating outside the domain of interstate commerce. A process of manufacture cannot obstruct or injuriously affect commerce when the product of that process is indistinguishable from the products of other processes. The statement that the power of Congress over commerce is full and complete does not aid the matter because that statement by Chief Justice Marshall in *Gibbons* v. *Ogden*, 9 Wheat. 1, is preceded by and predicated upon the proposition that the subject of regulation is within the power asserted.

That the possession of full and complete power does not warrant the exercise of that power to bring about a result or condition outside that power, is strikingly exemplified in cases decided by this court, of which *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, may be

mentioned, where the power of a State to fix the terms and conditions upon which foreign corporations may do business in the State was considered. So a general power of prohibition must exist to sustain the act. There is no such power. It is not a case of the possession of power restrained by certain limitations, but a case of the entire absence of power.

The authority of Congress to regulate commerce comprehends the power, within the limitations imposed by the nature and object of the grant, and those expressly set forth in the Constitution, to define what shall be commerce among the States, and, with a view to the effective exercise of its power to distinguish between things deleterious and things beneficial or innocuous, and to deny absolutely or conditionally entrance into such commerce to those things and persons which are deleterious, and, short of prohibition, to prescribe the rule by which the entrance to and movement in commerce of lawful and innocuous things and persons is to be governed. The *Obscene Literature Case*, the *Bad Egg Case*, the *White Slave Case* and the *Webb-Kenyon Case*, yield the principle that Congress may prevent the facility of interstate commerce from being made an instrument of evil, but in each of these cases, the subject of regulation retains, while moving in commerce, and at its journey's end, the inherent capacity to further the evil. The regulation did not reach back to the place of the creation of the subject as in the case at bar.

So far the adjudicated cases have gone and no further. A product of a condition which exists only within the confines of a State, before it may be said to affect commerce in such a way as to justify Congress in regulating it, must be one which retards or injures commerce, or in some manner burdens that commerce itself or one which retains its capacity to further an evil while actually moving in commerce.

Upon the assumption—which as a matter of fact is not correct—that the act prohibits only the product of child labor, it is said:—

The object of the act is not to regulate conditions of labor within the States individually, for these are primarily of concern only to the State, but to establish a certain plane of competition with respect to the utilization of such labor for the benefit of the country at large.

From this standpoint, the question raised by the act boils down simply to this: May Congress exercise its power to regulate commerce among the States for what it conceives the good of the country at large, even to the extent of prohibiting altogether harmless and useful articles of commerce produced under conditions of labor which from this point of view it deems detrimental?

Investigation of whether Congress has done by indirection that which it can not do directly, is not foreclosed by the statement that courts do not pass on the motives of Congress. They do not pass upon them to see whether they are good or bad, but when power is called into play, not for the purpose for which it was given, but for a covert purpose, it becomes not an abuse of a power, but the exercise of an unconferred power, and the duty is incumbent upon the court to determine this matter, and legislation may properly be characterized as covert, though its purpose and effect is to cure what is admitted to be an evil. *McCray* v. *United States*, 195 U. S. 27; *McCulloch* v. *Maryland*, 4 Wheat. 316. Covert legislation is legislation whose constitutional support bears no sincere relation to the legislative and popular purpose sought to be attained.

The act fixes a standard of child labor and debars from interstate and foreign commerce, for a period of thirty days from its production, all product of the mine, quarry, mill, factory or workshop in which the standard fixed by the act does not prevail, without regard to whether

child labor has entered in whole or in part into its production.

A congressional enactment can not be said to be a regulation of commerce among the several States within the meaning of the Constitution, unless it:

(1) Regulates some subject that is connected with interstate commerce directly or proximately and not merely remotely.

(2) Regulates commerce in some particular bearing a direct relation to interstate commerce.

(3) Can fairly be said, upon construing the whole scope of the law, that it is a regulation of interstate commerce and not a regulation of some other subject which Congress is not empowered to regulate. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 219 U. S. 186.

In the case at bar, there is no sincere and legitimate relation between the thing prohibited and the object to be attained. Congress is doing indirectly what it can not do directly. Certainly the grant was not intended to give Congress any greater power over interstate commerce than the States have over domestic commerce. The State can not close the door of commerce to lawful goods, though it may, by virtue of the police power, control the conditions out of which the commerce comes.

The act reaches beyond the body of commerce itself, and legislates in the *form* of a regulation of commerce to promote what is deemed to be the welfare of the people. It does more than prohibit the transportation of articles of commerce. In effect it is a prohibition of their creation, unless the local conditions of manufacture conform to the congressional standard.

The nature and ends of legislative power limit the extent of it, and the nature and extent of the grant must be determined in view of the object for which those powers are given. *Calder v. Bull*, 3 Wall. 386; *Legal Tender Cases*, 12 Wall. 531. The intention of the framers of the

Constitution in conferring the power to regulate commerce was (*Veazie* v. *Moore*, 14 How. 574):

"To establish perfect equality amongst the several states as to commercial rights," and (*Lehigh Valley R. R. Co.* v. *Pennsylvania*, 145 U. S. 200):

"The chief mischief intended to be obviated was the conflict between the commercial regulations of the several states, which was destructive of their harmony, and fatal to their commercial interest abroad."

The very essence of regulation is the existence of something to be regulated, and consequently the suggestion of a general power to prohibit is contrary to the reason of the thing. Of necessity, there must be some limit on the power to regulate, even when, under some circumstances, it may include prohibition. Otherwise, commerce may be destroyed. What fixes that limit? Public opinion as reflected by Congress, subject to the limited review permitted by the Fifth Amendment, or the logical and visible line of demarcation now drawn between "outlaws of commerce" and wholesome and lawful articles of commerce? That there is a difference with relation to the power of government between lawful and unlawful articles of commerce, appears from the opinions in the *Schollenberger Case*, 171 U. S. 1, and *McDermott* v. *Wisconsin*, 228 U. S. 115. The prohibitory power is limited to "the kind of traffic which no one" is "entitled to pursue as of right." The line of demarcation is found in the nature and quality of the goods, and the rights with respect thereto, rather than in the limited review permitted under the Fifth Amendment.

The ability to create, and free and unfettered action in transporting property, are essential to the citizen and to the welfare of the country. The right is so necessary and so paramount that it is difficult to say that the people would contemplate reposing in even an elective body like Congress an unlimited and unrestrained power over that

right, depending for its safety upon Congress refraining from arbitrary action. The right needs and has a more certain and fundamental protection. While the majority opinion in the *Lottery Case* maintained that Congress was vested with a wide discretion in matters of interstate commerce, yet it based the power to prohibit upon the inherent quality of illegality in the lottery tickets themselves.

The fundamental and far reaching question here to be determined is: Is there a line between "the commercial power of the Union and the municipal power of the State?" Has Congress absorbed the police power of the States? If Congress has the power here asserted, it is difficult to conceive what is left to the States.

MR. JUSTICE DAY delivered the opinion of the court.

A bill was filed in the United States District Court for the Western District of North Carolina by a father in his own behalf and as next friend of his two minor sons, one under the age of fourteen years and the other between the ages of fourteen and sixteen years, employees in a cotton mill at Charlotte, North Carolina, to enjoin the enforcement of the act of Congress intended to prevent interstate commerce in the products of child labor. Act of Sept. 1, 1916, c. 432, 39 Stat. 675.

The District Court held the act unconstitutional and entered a decree enjoining its enforcement. This appeal brings the case here. The first section of the act is in the margin.[1]

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[1] That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the

Other sections of the act contain provisions for its enforcement and prescribe penalties for its violation.

The attack upon the act rests upon three propositions: First: It is not a regulation of interstate and foreign commerce; Second: It contravenes the Tenth Amendment to the Constitution; Third: It conflicts with the Fifth Amendment to the Constitution.

The controlling question for decision is: Is it within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen have been employed or permitted to work, or children between the ages of fourteen and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock P. M. or before the hour of 6 o'clock A. M.?

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution which authorizes Congress to regulate commerce with foreign nations and among the States.

In *Gibbons* v. *Ogden*, 9 Wheat. 1, Chief Justice Marshall, speaking for this court, and defining the extent and nature of the commerce power, said, "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is

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product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock ante meridian, or before the hour of six o'clock ante meridian.

directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities. But it is insisted that adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate.

The first of these cases is *Champion* v. *Ames*, 188 U. S. 321, the so-called *Lottery Case*, in which it was held that Congress might pass a law having the effect to keep the channels of commerce free from use in the transportation of tickets used in the promotion of lottery schemes. In *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, this court sustained the power of Congress to pass the Pure Food and Drug Act which prohibited the introduction into the States by means of interstate commerce of impure foods and drugs. In *Hoke* v. *United States*, 227 U. S. 308, this court sustained the constitutionality of the so-called "White Slave Traffic Act" whereby the transportation of a woman in interstate commerce for the purpose of prostitution was forbidden. In that case we said, having reference to the authority of Congress, under the regulatory power, to protect the channels of interstate commerce:

"If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."

In *Caminetti* v. *United States*, 242 U. S. 470, we held that Congress might prohibit the transportation of women in interstate commerce for the purposes of debauchery and kindred purposes. In *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, the power of Congress over the transportation of intoxicating liquors was sustained. In the course of the opinion it was said:

"The power conferred is to regulate, and the very terms of the grant would seem to repel the contention that only prohibition of movement in interstate commerce was embraced. And the cogency of this is manifest since if the doctrine were applied to those manifold and important subjects of interstate commerce as to which Congress from the beginning has regulated, not prohibited, the existence of government under the Constitution would be no longer possible."

And, concluding the discussion which sustained the authority of the Government to prohibit the transportation of liquor in interstate commerce, the court said:

". . . . the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guarantees of the Constitution, embrace."

In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.

This element is wanting in the present case. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufactures in the States who employ children within the prohibited ages. The act in its effect does not regulate

transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are of themselves harmless. The act permits them to be freely shipped after thirty days from the time of their removal from the factory. When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

Commerce "consists of intercourse and traffic . . . and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities." The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

"When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state." (Mr. Justice Jackson in *In re Green*, 52 Fed. Rep. 113.) This principle has been recognized often in this court. *Coe* v. *Errol*, 116 U. S. 517; *Bacon* v. *Illinois*, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the

framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd* v. *Pearson*, 128 U. S. 1, 21.

It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation, and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may coöperate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which have no such regulations; surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress.

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the

States in their exercise of the police power over local trade and manufacture.

The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth Amendment to the Constitution.

Police regulations relating to the internal trade and affairs of the States have been uniformly recognised as within such control. "This," said this court in *United States* v. *Dewitt*, 9 Wall. 41, 45, "has been so frequently declared by this court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions, that we think it unnecessary to enter again upon the discussion." See *Keller* v. *United States*, 213 U. S. 138, 144, 145, 146. Cooley's Constitutional Limitations, 7th ed., p. 11.

In the judgment which established the broad power of Congress over interstate commerce, Chief Justice Marshall said (9 Wheat. 203): "They [inspection laws] act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike-roads, ferries, &c., are component parts of this mass."

And in *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 629, the same great judge said:

"That the framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that

the instrument they have given us is not to be so construed may be admitted."

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit. That such employment is generally deemed to require regulation is shown by the fact that the brief of counsel states that every State in the Union has a law upon the subject, limiting the right to thus employ children. In North Carolina, the State wherein is located the factory in which the employment was had in the present case, no child under twelve years of age is permitted to work.

It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers; "this principle," declared Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, "is universally admitted."

A statute must be judged by its natural and reasonable effect. *Collins* v. *New Hampshire*, 171 U. S. 30, 33, 34. The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. *Pipe Line Cases*, 234 U. S. 548, 560. The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution.

In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. *Lane County* v. *Oregon*, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government.

*New York* v. *Miln*, 11 Pet. 102, 139; *Slaughter House Cases*, 16 Wall. 36, 63; *Kidd* v. *Pearson*, *supra*. To sustain this statute would not be in our judgment a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States.

We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations and not by an invasion of the powers of the States. This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties entrusted to it by the Constitution.

In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority does not extend. The far reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed.

For these reasons we hold that this law exceeds the constitutional authority of Congress. It follows that the decree of the District Court must be

*Affirmed.*

MR. JUSTICE HOLMES, dissenting.

The single question in this case is whether Congress has power to prohibit the shipment in interstate or foreign commerce of any product of a cotton mill situated in the United States, in which within thirty days before the removal of the product children under fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in any week, or between seven in the evening and six in the morning. The objection urged against the power is that the States have exclusive control over their methods of production and that Congress cannot meddle with them, and taking the proposition in the sense of direct intermeddling I agree to it and suppose that no one denies it. But if an act is within the powers specifically conferred upon Congress, it seems to me that it is not made any less constitutional because of the indirect effects that it may have, however obvious it may be that it will have those effects, and that we are not at liberty upon such grounds to hold it void.

The first step in my argument is to make plain what no one is likely to dispute—that the statute in question is within the power expressly given to Congress if considered only as to its immediate effects and that if invalid it is so only upon some collateral ground. The statute confines itself to prohibiting the carriage of certain goods in interstate or foreign commerce. Congress is given power to regulate such commerce in unqualified terms. It would not be argued today that the power to regulate does not include the power to prohibit. Regulation means the prohibition of something, and when interstate

commerce is the matter to be regulated I cannot doubt that the regulation may prohibit any part of such commerce that Congress sees fit to forbid. At all events it is established by the *Lottery Case* and others that have followed it that a law is not beyond the regulative power of Congress merely because it prohibits certain transportation out and out. *Champion* v. *Ames*, 188 U. S. 321, 355, 359, *et seq.* So I repeat that this statute in its immediate operation is clearly within the Congress's constitutional power.

The question then is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the States in a matter upon which I have admitted that they are free from direct control. I should have thought that that matter had been disposed of so fully as to leave no room for doubt. I should have thought that the most conspicuous decisions of this Court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any State.

The manufacture of oleomargarine is as much a matter of state regulation as the manufacture of cotton cloth. Congress levied a tax upon the compound when colored so as to resemble butter that was so great as obviously to prohibit the manufacture and sale. In a very elaborate discussion the present Chief Justice excluded any inquiry into the purpose of an act which apart from that purpose was within the power of Congress. *McCray* v. *United States*, 195 U. S. 27. As to foreign commerce see *Weber* v. *Freed*, 239 U. S. 325, 329; *Brolan* v. *United States*, 236 U. S. 216, 217; *Buttfield* v. *Stranahan*, 192 U. S. 470. Fifty years ago a tax on state banks, the obvious purpose and actual effect of which was to drive them, or at least

their circulation, out of existence, was sustained, although the result was one that Congress had no constitutional power to require. The Court made short work of the argument as to the purpose of the act. "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers." *Veazie Bank* v. *Fenno*, 8 Wall. 533. So it well might have been argued that the corporation tax was intended under the guise of a revenue measure to secure a control not otherwise belonging to Congress, but the tax was sustained, and the objection so far as noticed was disposed of by citing *McCray* v. *United States*. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107. And to come to cases upon interstate commerce, notwithstanding *United States* v. *E. C. Knight Co.*, 156 U. S. 1, the Sherman Act has been made an instrument for the breaking up of combinations in restraint of trade and monopolies, using the power to regulate commerce as a foothold, but not proceeding because that commerce was the end actually in mind. The objection that the control of the States over production was interfered with was urged again and again but always in vain. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 68, 69. *United States* v. *American Tobacco Co.*, 221 U. S. 106, 184. *Hoke* v. *United States*, 227 U. S. 308, 321, 322. See finally and especially *Seven Cases of Eckman's Alterative* v. *United States*, 239 U. S. 510, 514, 515.

The Pure Food and Drug Act which was sustained in *Hipolite Egg Co.* v. *United States*, 220 U. S. 45, with the intimation that "no trade can be carried on between the States to which it [the power of Congress to regulate commerce] does not extend," 57, applies not merely to articles that the changing opinions of the time condemn as intrinsically harmful but to others innocent in themselves, simply on the ground that the order for them was induced by a preliminary fraud. *Weeks* v. *United States*, 245 U. S. 618. It does not matter whether the supposed

evil precedes or follows the transportation. It is enough that in the opinion of Congress the transportation encourages the evil. I may add that in the cases on the so-called White Slave Act it was established that the means adopted by Congress as convenient to the exercise of its power might have the character of police regulations. *Hoke* v. *United States*, 227 U. S. 308, 323. *Caminetti* v. *United States*, 242 U. S. 470, 492. In *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, 328, *Lesey* v. *Hardin*, 135 U. S. 100, 108, is quoted with seeming approval to the effect that "a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action." I see no reason for that proposition not applying here.

The notion that prohibition is any less prohibition when applied to things now thought evil I do not understand. But if there is any matter upon which civilized countries have agreed—far more unanimously than they have with regard to intoxicants and some other matters over which this country is now emotionally aroused—it is the evil of premature and excessive child labor. I should have thought that if we were to introduce our own moral conceptions where in my opinion they do not belong, this was preëminently a case for upholding the exercise of all its powers by the United States.

But I had thought that the propriety of the exercise of a power admitted to exist in some cases was for the consideration of Congress alone and that this Court always had disavowed the right to intrude its judgment upon questions of policy or morals. It is not for this Court to pronounce when prohibition is necessary to regulation if it ever may be necessary—to say that it is permissible as against strong drink but not as against the product of ruined lives.

The act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole. If, as has been the case within the memory of men still living, a State should take a different view of the propriety of sustaining a lottery from that which generally prevails, I cannot believe that the fact would require a different decision from that reached in *Champion* v. *Ames*. Yet in that case it would be said with quite as much force as in this that Congress was attempting to intermeddle with the State's domestic affairs. The national welfare as understood by Congress may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command.

MR. JUSTICE MCKENNA, MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE concur in this opinion.